

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Ni Keraay Middlebrook,
Petitioner,

v.

Civil Action No. 05-827-SLR

Thomas Carroll,
Warden and Carl Danberg, Attorney
General of the State of Delaware,
Respondent

Appendix To Petitioner's
Motion for Evidentiary Hearing
and Expansion of Record

Dated : 7/20/06

~~Ni Keraay Middlebrook~~
381 295569
DCC
1181 Paddock Road
Smyrna, DE 19977

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SUPERIOR COURT CRIMINAL DOCKET
(as of 01/13/2006)

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State of Delaware v. NIKERRAY K MIDDLEBROOK

DOB: 07/04/1974

State's Atty: JOHN A BARBER , Esq.

AKA: NIKERRAY MIDDLEBROOK

Defense Atty: CAROLINE P AYRES , Esq.

NIKERRAY MIDDLEBROOK

Assigned Judge:

Charges:

Count	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
001	9608015635	IN96091119R2	ATT. FELONY A	TG	07/18/1997
002	9608015635	IN96091120R2	ASSAULT 1ST	TGLI	07/18/1997
003	9608015635	IN96091121R2	PFDCF	TG	07/18/1997
004	9608015635	IN96091122R2	PFDCF	TG	07/18/1997
012	9608015635	IN96091795R2	PDWBPP	TG	07/18/1997
013	9608015635	IN96091796	RSP >\$1000	NOLP	11/12/1997

No.	Event Date	Event	Judge
1	09/20/1996	CASE ACCEPTED IN SUPERIOR COURT. ARREST DATE: 09/11/96 PRELIMINARY HEARING DATE: BAIL: HELD ON SECURED BAIL	150000.00 100
7	09/30/1996	INDICTMENT, TRUE BILL FILED.	
3	10/01/1996	NOTICE OF SERVICE OF DISCOVERY AND ACKNOWLEDGEMENT OF RECEIPT OF	
4	10/01/1996	NOTICE OF SERVICE OF DISCOVERY AND ACKNOWLEDGEMENT OF RECEIPT OF	
5	10/01/1996	NOTICE OF SERVICE OF DISCOVERY AND ACKNOWLEDGEMENT OF RECEIPT OF	
6	10/01/1996	NOTICE OF SERVICE OF DISCOVERY AND ACKNOWLEDGEMENT OF RECEIPT OF	
8	10/22/1996	ARRAIGNMENT BY RULE 10C, J. BAYARD, ESQ.	
9	11/25/1996	CASE REVIEW CALENDAR, CONTINUED.	COOCH RICHARD R.
10	01/13/1997	STATE'S WITNESS SUBPOENA ISSUED.	
11	01/16/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
12	01/16/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
13	01/16/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	

CERTIFIED AS A TRUE COPY
 ATTEST: SHARON AGNEW
 PROTHONOTARY
 BY *Jennifer A. Walther*

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State of Delaware v. NIKERRAY K MIDDLEBROOK DOB: 07/04/1974
 State's Atty: JOHN A BARBER , Esq. AKA: NIKERRAY MIDDLEBROOK
 Defense Atty: CAROLINE P AYRES , Esq. NIKERRAY MIDDLEBROOK

No.	Event Date	Event	Judge .
14	01/16/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
15	01/16/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
16	01/16/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
17	01/27/1997	TRIAL CALENDAR, CONTINUED. 032497	COOCH RICHARD R.
18	02/26/1997	SUBPOENA(S) MAILED.	
19	03/24/1997	TRIAL CALENDAR, CONTINUED. 050597	BARRON NORMAN A.
20	04/10/1997	STATE'S WITNESS SUBPOENA ISSUED.	
21	04/11/1997	SUBPOENA(S) MAILED.	
22	04/16/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
23	04/16/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
24	04/16/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
25	04/16/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
26	04/16/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
27	04/24/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
28	05/05/1997	TRIAL CALENDAR, CONTINUED.	COOCH RICHARD R.
29	06/03/1997	EDCM SCHEDULING TRIAL FILED. JULY 15, 1997, WITH JUDGE SILVERMAN	CARPENTER WILLIAM C. JR.
30	06/18/1997	SUBPOENA(S) MAILED.	
31	06/24/1997	STATE'S WITNESS SUBPOENA ISSUED.	
32	07/01/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
33	07/01/1997		

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State of Delaware v. NIKERRAY K MIDDLEBROOK DOB: 07/04/1974
 State's Atty: JOHN A BARBER , Esq. AKA: NIKERRAY MIDDLEBROOK
 Defense Atty: CAROLINE P AYRES , Esq. NIKERRAY MIDDLEBROOK

No.	Event Date	Event	Judge
		SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
34	07/01/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
35	07/01/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
36	07/01/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
37	07/01/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
38	07/01/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
39	07/01/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
40	07/01/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
41	07/01/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
42	07/01/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
43	07/10/1997	DEFENDANT'S LETTER FILED.	
44	07/14/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
45	07/14/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
46	07/14/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
47	07/14/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
48	07/14/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
49	07/16/1997	SHERIFF'S COSTS FOR SUBPOENAS DELIVERD.	
50	07/18/1997	JURY TRIAL HELD. DEFENDANT FOUND GUILTY AS TO ATTEMPTED MURDER 1ST, 1119, GUILTY AS TO THE LIO OF ASSAULT 1ST 1120, GUILTY AS TO PFDCF 1121, PFDCF 1122, AND GUILTY AS TO PDWBPP 1795. PSI ORDERED. BAIL IS REVOKED. SENTENCE DATE 09/05/97 AT 9:30. S/STEIN, SURLS D/BAYARD CC/FRABIZZO CC/MCCAFFERY	SILVERMAN FRED S.
51	07/18/1997	CHARGE TO THE JURY FILED.	SILVERMAN FRED S.
	09/05/1997		SILVERMAN FRED S.

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State of Delaware v. NIKERRAY K MIDDLEBROOK DOB: 07/04/1974
 State's Atty: JOHN A BARBER , Esq. AKA: NIKERRAY MIDDLEBROOK
 Defense Atty: CAROLINE P AYRES , Esq. NIKERRAY MIDDLEBROOK

No.	Event Date	Event	Judge
		SENTENCING CALENDAR, SENTENCING CONTINUED.	
52	09/26/1997	MOTION FOR APPOINTMENT OF COUNSEL FILED. PRO SE - REFERRED TO JUDGE CARPENTER (COJ)	
53	10/14/1997	ORDER: ON DEFENDANT'S MOTION TO DISMISS COUNSEL: DEFENDANT'S COUNSEL IS REQUIRED TO MEET WITH DEFENDANT IN ORDER TO DISCUSS THE ISSUES RAISED BY DEFENDANT PROMPTLY IN HIS MOTION AND TO DECIDE WHETHER DEFENDANT WANTS TO BE SENTENCED AS SOON AS POSSIBLE. IF DEFENDANT CONTINUES TO INSIST ON REPRESENTING HIMSELF AT SENTENCING AND THEREFORE, THE COURT WILL ADDRESS THE MATTER AT DEFENDANT'S SENTENCING AND/OR BEFORE HIS SECOND TRIAL.	SILVERMAN FRED S.
54	10/20/1997	MOTION FOR JUDGMENT OF ACQUITTAL FILED. PRO SE - REFERRED TO JUDGE SILVERMAN.	
56	11/04/1997	REFERRAL MEMORANDUM, DEFENDANT'S PRO SE MOTION FOR JUDGMENT OF ACQUITTAL IS REFERRED TO JAMES BAYARD AS COUNSEL OF RECORD, FOR WHATEVER ACTION HE DEEMS APPROPRIATE.	SILVERMAN FRED S.
	11/07/1997	SENTENCING CALENDAR, SENTENCING CONTINUED. TO HIRE PRIVAT ATT.	SILVERMAN FRED S.
57	11/12/1997	NOLLE PROSEQUI FILED BY ATTORNEY GENERAL. 1796, RSN: PLED & SENT.ON OTHER CHRGS.	
58	02/26/1998	ORDER: CONTINUANCE REQUEST - GRANTED SENTENCING NOW SCHEDULED FOR 032798 @ 1:15 P.M.	SILVERMAN FRED S.
59	02/27/1998	SENTENCING CALENDAR, SENTENCING CONTINUED 032798	SILVERMAN FRED S.
60	03/27/1998	SENTENCING CALENDAR, SENTENCING CONTINUED. NO NEW DATE GIVEN. DEFT.ATTORNEY NOT AVAIL.	SILVERMAN FRED S.
61	03/27/1998	DEFENDANT'S LETTER FILED.	
	06/12/1998	SENTENCING CALENDAR: DEFENDANT SENTENCED.	SILVERMAN FRED S.
62	06/12/1998	HEARING: DEFT. MOTION TO DISMISS - DENIED	SILVERMAN FRED S.
64	06/12/1998	SENTENCE: SIGNED ORDER FILED 7/2/98.	SILVERMAN FRED S.
63	06/23/1998	MOTION FOR NEW TRIAL FILED.	

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State of Delaware v. NIKERRAY K MIDDLEBROOK DOB: 07/04/1974
 State's Atty: JOHN A BARBER , Esq. AKA: NIKERRAY MIDDLEBROOK
 Defense Atty: CAROLINE P AYRES , Esq. NIKERRAY MIDDLEBROOK

No.	Event Date	Event	Judge
		CAROLINE P. AYRES, ESQ. - REFERRED TO JUDGE SILVERMAN. REFERRED ON JUNE 24, 1998.	
65	06/26/1998	ORDER: UPON DEFT'S MOTION FOR A NEW TRIAL. THE COURT FINDS THAT DEFT'S MOTION FOR A NEW TRIAL IS INSUFFICIENT ON ITS FACE TO JUSTIFY FURTHER PROCEEDINGS AND IS DENIED. IT IS SO ORDERED.	SILVERMAN FRED S.
66	08/21/1998	RENEWED MOTION FOR A NEW TRIAL FILED. CAROLINE P. AYRES, ESQ. - REFERRED TO JUDGE SILVERMAN.	
67	09/08/1998	ORDER: 1. ON AUGUST 21, 1998, DEFENDANT FILED A RENEWED MOTION FOR A NEW TRIAL. 2. IF THE STATE OPPOSES THE REQUEST, THE STATE WILL FILE A RESPONSE WITHIN 15 DAYS. THE STATE'S RESPONSE SHALL INCLUDE THE GROUNDS ON WHICH THE STATE'S OPPOSITION IS BASED, INCLUDING CITATIONS TO THE RECORD AND AUTHORITIES. 3. IN THE EVENT THAT THE STATE DOES NOT RESPOND ON OR BEFORE THE TIME SET FOR THE STATE'S FILING RESPONSE, THE COURT WILL CONSIDER THE MOTION WITHOUT FURTHER NOTICE OR HEARING AND THE COURT MAY GRANT THE MOTION AS UNOPPOSED. 4. THE COURT WILL CONSIDER EXTENDING THE DEADLINE SET OUT ABOVE, UPON APPLICATION MADE BEFORE EXPIRATION OF THE DEADLINE. 5. THE COURT WILL NOT CONSIDER FILINGS MADE AFTER THE DEADLINE, ABSENT AN EXTENSION. IT IS SO ORDERED.	SILVERMAN FRED S.
68	09/17/1998	AFFIDAVIT OF REGINA GREEN	
69	09/17/1998	LETTER FROM: CAROLINE AYRES TO: JUDGE SILVERMAN RE: REQUESTING AFFADAVIT BE CONSIDERED AS ADDITIONAL GROUNDS FOR GRANTING DEFENDANT A NEW TRIAL	
71	09/18/1998	EMAIL FILED. TO: JUDGE SILVERMAN FROM: ROBERT SURLES RE: STATE ASKS FOR AN EXTENSION TO RESPOND TO THE DEFENSE MOTION FOR A NEW TRIAL. GRANTED BY JUDGE SILVERMAN.	SILVERMAN FRED S.
70	09/25/1998	ORDER: ON SEPTEMBER 18, 1998, THE COURT RECEIVED A LETTER FROM MS. AYRES ENCLOSING AN AFFADAVIT. IF THE STATE OPPOSES THE REQUEST, THE STATE WILL FILE A RESPONSE WITHIN 15 DAYS. THE STATE'S RESPONSE SHALL INCLUDE THE GROUNDS ON WHICH THE STATE'S OPPOSITION IS BASED, INCLUDING CITATIONS TO THE RECORD AND AUTHORITIES. IN THE EVENT THAT	SILVERMAN FRED S.

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State of Delaware v. NIKERRAY K MIDDLEBROOK DOB: 07/04/1974
 State's Atty: JOHN A BARBER , Esq. AKA: NIKERRAY MIDDLEBROOK
 Defense Atty: CAROLINE P AYRES , Esq. NIKERRAY MIDDLEBROOK

No.	Event Date	Event	Judge
		THE STATE DOES NOT RESPOND ON OR BEFORE THE TIME SET FOR THE STATE'S FILING A RESPONSE, THE COURT WILL CONSIDER THE MOTION WITHOUT FURTHER NOTICE OR HEARING AND THE COURT MAY GRANT THE MOTION AS UNOPPOSED. THE COURT WILL CONSIDER EXTENDING THE DEADLINE SET OUT ABOVE, UPON APPLICATION MADE BEFORE EXPIRATION OF THE DEADLINE. THE COURT WILL NOT CONSIDER FILINGS MADE AFTER THE DEADLINE, ABSENT AN EXTENSION. IT IS SO ORDERED.	
72	11/17/1998	ORDER: (SUBMITTED; 100998) (DECIDED; 111798) DEFT'S RENEWED MOTION FOR A NEW TRIAL - DENIED. IT IS SO ORDERED.	SILVERMAN FRED S.
73	08/23/1999	SUBSTITUTION OF COUNSEL FILED. SUBSTITUTE CAROLINE AYRES FOR JAMES BAYARD AS DEFENSE COUNSEL.	
74	11/08/1999	MOTION FOR DIRECTING THE PREPARATION OF TRANSCRIPTS PRO SE FILED. REFERRED TO JUDGE BARRON COJ 11/17/99 ATTACHED: AFFADAVIT TO PROCEED IN FORMA PAUPAERIS ORIGINALLY REFERRED TO JUDGE SILVERMAN 11/8/99 RETURNED	
75	11/18/1999	ORDER: MOTION FOR TRANSCRIPTS IS DENIED. YOUR MOTION IN THE INSTANT CASE BEING IDENTICALLY GENERAL AND UNSUPPORTED BY ANY SPECIFIC CLAIM OR FACTS, THIS COURT FINDS NO REASON TO REACH A CONTRARY CONCLUSION. FOR THE FOREGOING REASONS, YOUR MOTION IS DENIED.	BARRON NORMAN A.
76	12/03/1999	DEFENDANT'S LETTER FILED. TO JUDGE SILVERMAN REQUESTING THE COURT TO PAY FOR TRANSCRIPTS OF HIS TRIAL TO FILE POST CONVICTION RELIEF.	
78	12/03/1999	DEFENDANT'S LETTER FILED. TO JUDGE SILVERMAN INQUIRING ABOUT A MOTION FOR THE COURT TO PAY FOR TRANSCRIPTS OF HIS TRIAL AND REQUESTING TO HAVE A COURT APPOINTED ATTORNEY.	
77	12/08/1999	REFERRAL MEMORANDUM. TO CAROLINE AYRES, ESQ. FROM JUDGE SILVERMAN ATTACHED TO DOCKET #76 LETTER.	SILVERMAN FRED S.
79	12/08/1999	MOTION TO ENTER AN ORDER DIRECTING THE PREPARATION OF TRANSCRIPTS-PRO SE FILED. REFERRED TO JUDGE SILVERMAN COJ 12/9/99	
80	12/10/1999	MOTION FOR APPOINTMENT OF COUNSEL (PRO SE) FILED. REFERRED TO JUDGE DELPESCO -COJ 12/13/99	
81	01/11/2000		SILVERMAN FRED S.

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State of Delaware v. NIKERRAY K MIDDLEBROOK DOB: 07/04/1974
 State's Atty: JOHN A BARBER , Esq. AKA: NIKERRAY MIDDLEBROOK
 Defense Atty: CAROLINE P AYRES , Esq. NIKERRAY MIDDLEBROOK

No.	Event Date	Event	Judge
		ORDER: THE COURT IS HEREBY REAPPOINTING THE PUBLIC DEFENDER TO REPRESENT THE DEFENDANT. IT IS SO ORDERED.	
82	03/17/2000	DEFENDANT'S LETTER FILED ADDRESSED TO JUDGE SILVERMAN REQUESTING COPIES OF TRANSCRIPTS AND AN ORDER PERTAINING TO MOTIONS HE HAS FILED.	
83	03/17/2000	REFERRAL MEMORANDUM FROM JUDGE SILVERMAN TO JAMES BAYARD, ESQ.	SILVERMAN FRED S.
84	04/28/2000	RECEIPT OF PETITION FOR EXTRAORDINARY WRIT OF MANDAMUS PURSUANT TO SUPREME COURT RULE 43 BY PETITIONER. RECEIPT OF MEMO DATED 4/25/00 FROM JUSTICE BERGER TO CLERK, NOTING HER DISQUALIFICATION IN THIS MATTER.	
89	05/24/2000	DEFENDANT'S LETTER FILED. TO: JUDGE SILVERMAN FROM: NIKERRAY MIDDLEBROOK ADVISING THE JUDGE OF NOT HEARING FROM MR. BAYARD REGARDING HIS APPEAL & OF HIS PREVIOUS DISSATISFACTION WITH MR. BAYARD. ALSO REQUESTING ANOTHER PUBLIC DEFENDER BE ASSIGNED TO HIS CASE.	SILVERMAN FRED S.
85	05/31/2000	ORDER: IN THE MATTER OF THE PETITION OF NIKERRAY MIDDLEBROOK FOR A WRIT OF MANDAMUS. MIDDLEBROOK'S PETITION FOR THE ISSUANCE OF AN EXTRAORDINARY WRIT IS DENIED. THE STATE'S MOTION TO DISMISS IS GRANTED	
86	06/02/2000	MOTION FOR POSTCONVICTION RELIEF FILED. (PRO SE) REFERRED TO JUDGE BABIARZ 6/12/00 AMH LETTER TO ATTORNEY GENERAL'S OFFICE NOTIFICATION OF FILING FOR MOTION FOR POSTCONVICTION RELIEF.	
87	06/19/2000	RECEIPT OF CERTIFIED COPY OF ORDER DATED 5/30/00.	
90	06/19/2000	REFERRAL MEMORANDUM. FROM JUDGE SILVERMAN TO JAMES BAYARD, ATTACHED TO DEF. LETTER	SILVERMAN FRED S.
88	06/23/2000	LETTER/ORDER ISSUED BY JUDGE: SILVERMAN TO: COUNSEL RE: ATTACHED IS A COPY OF DEFENDANT'S JUNE 2, 2000 MOTION FOR POSTCONVICTION RELIEF. IN ORDER TO DECIDE HOW TO PROCEED, IT WOULD HELP IF YOU RESPOND BRIEFLY TO DEFENDANT'S CLAIM THAT YOU FAILED TO FILE A TIMELY DIRECT APPEAL ON HIS BEHALF. THE COURT WOULD LIKE YOUR RESPONSE WITHIN TEN DAYS. IT IS SO ORDERED.	SILVERMAN FRED S.

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State of Delaware v. NIKERRAY K MIDDLEBROOK DOB: 07/04/1974
 State's Atty: JOHN A BARBER , Esq. AKA: NIKERRAY MIDDLEBROOK
 Defense Atty: CAROLINE P AYRES , Esq. NIKERRAY MIDDLEBROOK

No.	Event Date	Event	Judge
95	06/27/2000	MOTION FOR STAY OF SENTENCE (CERT.OF REASONABLE DOUBT) FILED. PRO SE / REFERRED TO JUDGE SILVERMAN.	
92	06/29/2000	AMENDED MOTION FOR POSTCONVICTION RELIEF FILED (PRO SE) REFERRED TO JUDGE SILVERMAN 7/10/00	
93	06/29/2000	MOTION FOR STAY OF EXECUTION OF SENTENCE (PRO SE) FILED. REFERRED TO JUDGE SILVERMAN.	
94	06/29/2000	MOTION FOR APPOINTMENT OF COUNSEL (PRO SE) FILED. REFERRED TO JUDGE SILVERMAN	
97	06/29/2000	AMENDED MOTION FOR POST - CONVICTION RELIEF FILED SENT TO JAMES BAYARD, ESQ. AS COUNSEL FOR THE DEFENDANT.	SILVERMAN FRED S.
91	07/05/2000	AFFIDAVIT OF CAROLINE AYERS, ESQ IN RESPONSE TO RULE 61. REFERRED TO JUDGE SILVERMAN 7/6/00	
96	07/14/2000	ORDER: THE PUBLIC DEFENDER IS REAPPOINTED TO REPRESENT THE DEFENDANT, AT LEAST WITH RESPECT TO THE ISSUES THAT SHOULD HAVE BEEN RAISED ON DIRECT APPEAL. ONCE THE ISSUES THAT SHOULD HAVE BEEN RAISED ON DIRECT APPEAL ARE ADDRESSED, THE COURT WILL TAKE UP ANY REMAINING RULE 61 ISSUES. MEANWHILE, SO THERE IS NO CONFUSION ON THIS POINT,THE COURT FINDS NO BASIS FOR ISSUING A CERTIFI CATE OF REASONABLE DOUBT. IT IS SO ORDERED.	SILVERMAN FRED S.
98	07/24/2000	LETTER FROM NIKKERAY MIDDLEBROOK TO JUDGE SILVERMAN. RE: INEFFECTIVE ASSISTANCE OF COUNSEL. LETTER REFERRED TO JUDGE SILVERMAN 7/26/2000	
100	07/24/2000	DEFENDANT'S LETTER FILED TO: JUDGE SILVERMAN. REQUESTING THAT ENCLOSED INFORMATION BE CONSIDERED IN GRANTING A POST CONVICTION RELIEF MOTION.	
99	07/31/2000	MOTION FOR EVIDENTIARY HEARING (PRO SE) FILED. REFERRED TO JUDGE SILVERMAN 8/1/00 AMH	
101	08/09/2000	REFERRAL MEMORANDUM. TO JAMES BAYARD, ESQ FROM: JUDGE SILVERMAN MOTION FOR EVIDENTIARY HEARING THE ATTACHED DOCUMENT, WHICH HAS BEEN RECEIVED AND REVIEWED BY THE COURT, IS REFERRED TO YOU AS COUNSEL OF RECORD FOR WHATEVER ACTION	SILVERMAN FRED S.

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State of Delaware v. NIKERRAY K MIDDLEBROOK DOB: 07/04/1974
 State's Atty: JOHN A BARBER , Esq. AKA: NIKERRAY MIDDLEBROOK
 Defense Atty: CAROLINE P AYRES , Esq. NIKERRAY MIDDLEBROOK

No.	Event Date	Event	Judge
		YOU NEED APPROPRIATE.	
102	08/14/2000	DEFENDANT'S LETTER FILED.	
		REQUESTING MOTION FOR EVIDENTIARY HEARING.	
103	08/18/2000	LETTER FROM LOREN MEYERS, CHIEF OF APPEALS TO: JUDGE SILVERMAN	
		RE: REGARDING THE LACK OF AN APPEAL BEING FILED ON BEHALF OF THE DEF.	
109	08/18/2000	LETTER FROM: LOREN MEYERS TO: JUDGE SILVERMAN	
		RE: RE-EMPHASIZE POINTS MADE BY MR. BAYARD IN HIS EARLIER LETTER TO JUDGE SILVERMAN.	
104	08/21/2000	SILVERMAN FRED S. AT THIS POINT, IT IS OBVIOUS THAT CONSIDERABLE CONFUSION SURROUNDS DEFENDANT'S ORIGINAL SENTENCING AND THE EVENTS IMMEDIATELY FOLLOWING IT. IN SHORT, DEFENDANT, IN EFFECT, HAD TWO ATTORNEYS, ONE COURT-APPOINTED AND ONE PRIVATE RETAINED. IT IS UNCLEAR AS TO WHICH ATTORNEY WAS RESPONSIBLE FOR FILING DEFENDANT'S APPEAL. IN ORDER TO CLEAR UP THE CONFUSION AND TO PROTECT DEFENDANT'S RIGHTS, THE SENTENCE ORIGINALLY IMPOSED JUNE 12, 1998 IS REIMPOSED, IN ITS ENTIRETY, AS OF TODAY. THE PUBLIC DEFENDER IS REAPPOINTED TO REPRESENT DEFENDANT FOR ALL PURPOSES, INCLUDING THE TIMELY FILING OF AN APPEAL FROM DEFENDANT'S CONVICTION AND THE REIMPOSED SENTENCE. SO ORDERED.	
105	09/05/2000	NOTICE OF APPEAL FILED. (COPY) #424, 2000.	
106	09/07/2000	NOTICE OF APPEAL FILED. (COPY) #427, 2000.	
107	09/12/2000	NOTICE OF APPEAL FILED. (COPY) #424/427, 2000.	
108	09/12/2000	LETTER FROM SUPREME COURT TO KARTHLEEN FELDMAN, COURT REPORTER. TRANSCRIPT IS DUE NO LATER THAN OCTOBER 16, 2000.	
110	09/19/2000	RECEIPT OF FOLLOWING DOCKET ENTRIES FROM SUPREME COURT. SEPTEMBER 14, 2000 - CERTIFIED COPY OF ORDER DATED SEPT. 13, 2000. SEPTEMBER 14, 2000 - CERTIFIED COPY OF ORDER DATED SEPT. 13, 2000.	
111	10/02/2000	TRANSCRIPT OF OFFICE CONFERENCE FROM JULY 15, 1997.	
112	10/02/2000	TRANSCRIPT OF TRIAL FROM JULY 16, 1997.	
113	10/02/2000	TRANSCRIPT OF OFFICE CONFERENCE FROM JULY 17, 1997.	
114	10/02/2000		

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State of Delaware v. NIKERRAY K MIDDLEBROOK DOB: 07/04/1974
 State's Atty: JOHN A BARBER , Esq. AKA: NIKERRAY MIDDLEBROOK
 Defense Atty: CAROLINE P AYRES , Esq. NIKERRAY MIDDLEBROOK

No.	Event Date	Event	Judge
		TRANSCRIPT OF TRIAL FROM JULY 18, 1997.	
115	10/04/2000	RECEIPT OF CERTIFIED COPY OF ORDER DATED 9/14/00.	
116	10/04/2000	A DEFENDANT REPRESENTED BY COUNSEL MAY NOT ACT PRO SE. COUNSEL IS THE ONLY PERSON WHO IS AUTHORIZED TO ACT ON BEHALF OF THE DEFENDANT. NOW, THEREFORE, IT IS ORDERED THAT THIS APPEAL BE, AND THE SAME HEREBY IS, DISMISSED.	
117	10/06/2000	TRANSCRIPT OF PROCEEDING FROM JUNE 12, 1998.	
118	10/11/2000	DEFENDANT'S LETTER FILED TO: DORENE STARKS. RE: WANTS CHANGE OF ADDRESS DOCKETED.	
119	11/30/2000	EMAIL FILED TO: COLLEN REDMOND FROM: LINDA HAWTHORNE RE: BLUE SHEET ITEM FOR 11/30/00 EVIDENTIARY HEARING AS TO PRO SE STATUS	
120	11/30/2000	EVIDENTIARY HEARING HELD WITH JUDGE SILVERMAN DEF. ATTY -BAYARD DAG - MEYERS C/C - YEAGER C/R - O'HARE ACTION: JUDGE SILVERMAN WILL RECOMMEND THAT DEF. BE ALLOWED TO REPRESENT HIMSELF AT SUPREME COURT OF DE APPEAL. JUDGE STRONGLY SUGGESTS Q THAT DEF. RE-THINK HIS GOING PRO-SE.	SILVERMAN FRED S.
121	12/04/2000	FINDS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS FILED. IN ACCORDANCE WITH THE SUPREME COURT OF DELAWARE'S SEPTEMBER 13, 2000 ORDER, THIS COURT CONDUCTED A HEARING, ON THE RECORD, ON NOVEMBER 30, 2000 FOR THE LIMITED PURPOSE OF MAKING FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH RESPECT TO APPELLANT'S REQUEST TO PURSUE HIS APPEAL PRO SE. SEE REST OF ORDER IN FILE.	SILVERMAN FRED S.
122	12/05/2000	RECORDS SENT BACK TO SUPREME COURT FOR REMAND.	
123	12/06/2000	RECEIPT OF RECORD ACKNOWLEDGED BY SUPREME COURT.	
124	12/08/2000	LETTER FROM SUPREME COURT TO PROTHONOTARY. RECORD IS DUE NO LATER THAN DECEMBER 18, 2000.	
125	05/22/2001		

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SUPERIOR COURT CRIMINAL DOCKET
(as of 01/13/2006)

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State of Delaware v. NIKERRAY K MIDDLEBROOK DOB: 07/04/1974
 State's Atty: JOHN A BARBER , Esq. AKA: NIKERRAY MIDDLEBROOK
 Defense Atty: CAROLINE P AYRES , Esq. NIKERRAY MIDDLEBROOK

No.	Event Date	Event	Judge
		SUPREME COURT RECORD AND CERTIFIED COPY OF ORDER DATED 5/11/01. #422, 2000 CONSOLIDATED WITH 427, 2000. REMANDED. CASE DUE TO BE RETURNED BY 6/11/01. SENT TO SILVERMAN, J. ON 5/23/01.	
126	05/31/2001	HEARING RESCHEDULED. DEFENDANT WAS NOT TRANSPORTED. NO DATE GIVEN.	
127	06/08/2001	HEARING DEFENDANT WANTS COURT APPT COUNSEL, BUT NO PUBLIC DEFENDER. JUDGE SILVERMAN WANTS A CONFLICT ATTORNEY APPT ASAP. DEFENDANT REQUESTED THAT HE GET 2 DIFFERENT ATTORNEYS FOR HIS 2 CASES, HOWEVER, JUDGE SILVERMAN WILL LEAVE THAT DECISION UP TO THE CONFLICT ATTORNEY CHOSEN.	SILVERMAN FRED S.
128	06/21/2001	ORDER: JEROME CAPONE, ESQ IS HEREBY APPOINTED AS CONFLICT ATTORNEY TO REPRESENT THE ABOVE NAMED DEFENDANT FOR ALL RELIEF IN THE SUPREME COURT FOR THIS CASE. IT IS SO ORDERED.	SILVERMAN FRED S.
	06/26/2001	RECORDS SENT TO SUPREME COURT.	
130	02/20/2003	MANDATE FILED FROM SUPREME COURT: SUPERIOR COURT JUDGMENT AFFIRMED. SUPREME COURT CASE NO: 424/427, 2003 SUBMITTED: NOVEMBER 26, 2002 DECIDED: JANUARY 28, 2003 BEFORE VEASEY, CHIEF JUSTICE, WALSH, AND HOLLAND, JUSTICES.	
131	10/28/2003	MOTION FOR POSTCONVICTION RELIEF FILED. PRO SE REFERRED TO JUDGE SILVERMAN	
132	11/04/2003	LETTER FROM ANGELA HAIRSTON, PROTHONOTARY OFFC. TO ROBERT SURLES, DAG RE: NOTICE OF FILING OF PRO SE MOTION FOR POSTCONVICTION RELIEF. ATTACHED: COPY OF THE MOTION.	
133	03/01/2004	LETTER/ORDER ISSUED BY JUDGE: SILVERMAN. TO: JAMES BAYARD, ESQ. RE: RULE 61. PRIOR COUNSEL AFFIDAVIT DUE THIRTY DAYS FROM THE DATE OF THIS ORDER. THEREAFTER, CONSISTENT WITH RULE 61(G)(3) THE STATE AND MR. MIDDLEBROOK WILL HAVE THIRTY DAYS IN WHICH TO SUBMIT A RESPONSE ADMITTING OR DENYING YOUR AFFIDAVIT'S CORRECTNESS. THE STATE AND MR. MIDDLEBROOK DO NOT HAVE LEAVE TO MAKE ADDITIONAL FILINGS BEYOND THE ONE PROVIDED FOR UNDER RULE 61(G)(3) AND THIS ORDER. THE COURT WILL DISREGARD ANY FILING THAT VIOLATES RULE 61 AND THIS ORDER. IT IS SO ORDERED. * SEE FULL LETTER ORDER IN FILE.	SILVERMAN FRED S.
134	04/13/2004		

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SUPERIOR COURT CRIMINAL DOCKET
(as of 01/13/2006)

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State of Delaware v. NIKERRAY K MIDDLEBROOK

DOB: 07/04/1974

State's Atty: JOHN A BARBER , Esq.

AKA: NIKERRAY MIDDLEBROOK

Defense Atty: CAROLINE P AYRES , Esq.

NIKERRAY MIDDLEBROOK

No.	Event Date	Event	Judge
		AFFIDAVIT IN SUPPORT OF PETITIONER'S REPLY TO JAMES BAYARD'S LETTER RESPONSE DATED MARCH 23, 2004.	
135	05/19/2004	DEFT'S AFFIDAVIT IN SUPPORT OF HIS MOTION FOR POST CONVICTION RELIEF AND HIS REPLY MOTION IN LIEU OF THE STATE'S NEGLECT TO SERVE PETITIONER WITH A TIMELY COPY OF THE STATE'S ANSWER TO DEFT COUNSEL'S AFFIDAVIT ORDERED BY THE COURT.	
136	07/30/2004	LETTER/ORDER ISSUED BY JUDGE SILVERMAN. RE: RULE 61. CONSISTENT WITH RULE 61, THE COURT WILL ACCEPT NO FURTHER RESPONSE FROM MR. MIDDLEBROOK OR THE STATE, EXCEPT FOR THE TAPED STATEMENT ACCOMPANIED BY AN UNADORNED TRANSMITTAL LETTER. IF THE STATE IGNORES THIS ORDER AND FAILS TO SUBMIT THE TAPE RECORDING, THE COURT WILL IMPOSE SANCTION ON ITS OWN INITIATIVE. OTHERWISE, THE COURT WILL DECIDE MR. MIDDLEBROOK'S MOTION AND ISSUE A FINAL ORDER WITHIN 90 DYS OF RECEIVING THE TAPED STATEMENT.	SILVERMAN FRED S.
137	08/25/2004	LETTER FROM J. BARBER TO FSS I AM DEPUTY ASSIGNED TO THE ABOVE CASE IN WHICH YOUR HONOR REQUESTED THE TAPED STATEMENTS OF THE DEFT. I HAVE BEEN UNABLE TO LOCATE ANY SUCH TAPES IN THE POSSESSION OF THE STATE. I HAVE BEEN ADVISED BY THE EVIDENCE CUSTODIAN AT WILM. POLICE DEPT. THAT ALL EVIDENCE IN THIS CASE WAS DESTROYED IN FEBRUARY 2002. THER ARE NO EVIDENCE RECEIPTS DOCUMENTING EXACTLY WHAT WAS DESTROYED. ADDITIONALLY, THE CHIEF INVESTIGATING OFFICER IN THIS CASE DOES NOT POSSESS ANY TAPED STATEMENTS OF THE DEFT. I HAVE ASKED THE SUPERIOR COURT PROTHONOTARY IF THEY POSSESSED SUCH TAPES, AND I WAS ADVISED THAT NONE WERE ENTERED INTO EVIDENCE DURING THE TRIAL. I AM STILL SEARCHING FOR THE PROSECUTION FILE, AND RESPECTFULLY REQUEST AN ADDITIONAL 2 WEEKS IN ORDER TO CONDUCT A COMPLETE INVESTIGATION. **8/20/04 SO ORDERED BY JUDGE SILVERMAN	SILVERMAN FRED S.
138	12/16/2004	ORDER: UPON DEFENDANT'S PRO SE MOTION FOR POSTCONVICTION RELIEF;DENIED FOR THE FOGOING REASONS, AFTER PRELIMINARY AND SUBSEQUENT CONSIDERATION, IT APPEARS FROM THE MOTION FOR POSTCONVICTION REIEF, THE RECORD OF PRIOR PROCEEDINGS AND THE TWICE EXPANDED RECORD THAT DEFENDANT IS NOT ENTITLED TO RELIEF AND DEFENDANT'S MOTION IS SUMMARILY DENIED. THE PROTHONOTARY SHALL NOTIFY DEFENDANT IF THIS DECISION. IT IS SO ORDERED.	SILVERMAN FRED S.
139	01/26/2005	LETTER FROM SUPREME COURT TO NIKERRAY MIDDLEBROOK	

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SUPERIOR COURT CRIMINAL DOCKET
(as of 01/13/2006)

Page 13

State of Delaware v. NIKERRAY K MIDDLEBROOK DOB: 07/04/1974
 State's Atty: JOHN A BARBER , Esq. AKA: NIKERRAY MIDDLEBROOK
 Defense Atty: CAROLINE P AYRES , Esq. NIKERRAY MIDDLEBROOK

No.	Event Date	Event	Judge
		RE: NOTICE TO SHOW CAUSE.	
140	02/04/2005	LETTER FROM SUPREME COURT TO SHARON AGNEW, PROTHONOTARY	
		RE: THE RECORD IS DUE TO BE FILED 02/25/05	
		30, 2005	
141	02/25/2005	RECEIPT FROM SUPREME ACKNOWLEDGING RECORD.	
		30, 2005	
142	10/12/2005	MANDATE FILED FROM SUPREME COURT: SUPERIOR COURT JUDGMENT AFFIRMED.	
		SUPREME COURT CASE NO: 30, 2005	
		SUBMITTED: JULY 29,2005	
		DECIDED: SEPTEMBER 21,2005	
		BEFORE HOLLAND,JACOBS AND RIDGELY, JUSTICES.	

*** END OF DOCKET LISTING AS OF 01/13/2006 ***
 PRINTED BY: JAGREXM

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NIKERRAY K. Middlebrook
1301 EAST 12th STREET
M.P.C.J.F
Wilmington, DE 19809

Judge SILVERMAN
SUPERIOR COURT, N.C.C
Wilmington, DE 19801

July 25, 1997

RE: Criminal Action Nos. IN 96-09-1119 thru 1122 AND 1795 thru 1796

DEAR Judge SILVERMAN,

(COPY)

ON July 18, 1997, I was found guilty of the ABOVE Criminal Action Numbers, after having BEEN tried by a jury. I am submitting this letter requesting to be SENTENCED ON ALL CHARGES immediately following the PRE - SENTENCE INVESTIGATION.

My request is made in light of the fact that I want to finish my "Education" AND would like to get started AS SOON AS possible - but I am told that I must first be SENTENCED before I CAN be classified AND put into the position to start my Education. I WAS attending DELAWARE Community College and just Accepted a job at Tri - STATE BEVERAGES. I think it would be in my best interest if you CHECK into this CASE thoroughly AND consider all the facts when SENTENCING. Your utmost Consideration in this matter would be VERY much Appreciated. Thank You.

Very Truly Yours,
Nikerray K. Middlebrook

NIKERRAY MIDDLEBROOK
GANDER Hill PRISION
1301 E. 12th Street
Wilmington, DE 19809

THE HONORABLE FRED S. SILVERMAN,

I am writing to you to inform the Court Caroline P. Ayres is no longer my attorney. Since I was sentenced on June 27, 1998, no appeal has been filed on my behalf. Ms Ayres did not file a timely appeal to the Supreme Court of the State of Delaware on account of a glaring mistake.

All I desire is for a chance to prove my innocence. I believe mistakes were made at trial that should be corrected. If I am denied a fair chance to appeal my conviction justice will truly be denied. In order to file my appeal I need the trial record.

While my incarceration is fortuitous, I have benefited substantially. I have been studying with the Jeharah Witness and taking time myself to examine the entire Bible. I have taken certificate correspondant courses in Real Estate and Paralegal. My ^{logic and morals} ~~thought~~ process has ~~definet~~ definitely changed for the best as a whole for the best. This is a benefit to myself as well as others. I take time out to reason with other^s and explain the (more) positive qualities a sincere life will lead. All I ask of

Nikerray Middlebrook
Gander Hill Prison
Wilmington DE 19809

November 9, 1999

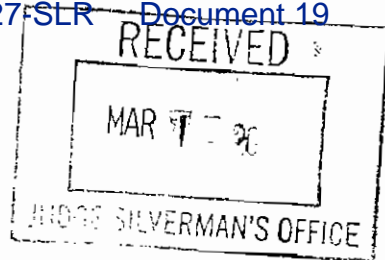
Judge Fred S. Silverman
Prothonotary Office
Daniel L. Herrmann Courthouse
1020 King Street
Wilmington, DE 19801

RE: STATE V. NIKERRAY MIDDLEBROOK
.C.A. No. 9608015635

Dear Honorable Judge Silverman,

I am writing this letter as a follow-up to my Motion to Enter AN ORDER Directing The Preperation of Transcript, I would like to inquire about the status of this motion.

I would like to point out the fact, that, my appeal has been delayed for almost Seven-teen months. I was recently represented by Privately retained Counsel, And, I was denied effective representation by missing the date for filing a direct appeal. I do not believe this Attorney has my best intrest in mind, so I have set in motion dismissal of my privately retained Counsel. I ask in the intrest interest of justice, I be appointed Counsel. I pray you grant me favor.



1301 E. 12th Street
Wilmington, DE 19809

February 25, 2000

Honorable Fred S. Silverman
Prothonotary
Superior Court
1020 N. King Street
Wilmington, DE 19801

Dear Honorable Judge Fred S. Silverman,

May You have undeserved kindness and peace from my God the Father of the Lord Christ Jesus. I thank God always when I pray for you.

I am writing to you concerning my previous motions, (Motion Ordering Transcripts, December 6, 1999 and Motion for Counsel, December 8, 1999.). I was visited by James Bayard, Jr. at the prison on January 14, 2000. He explained to me he was reappointed to my case. I am lost as to who is the attorney of record in my case. I asked Mr. Bayard during our conversation at the prison and in a letter dated January 16, 2000 to forward a copy of your order pertaining to the motions I filed I like to point out as of this date I have never seen the documents. Please send me a copy or have the attorney of record forward the order to me. Thank You

Very Truly Yours
Nehemiah Mitchell

TO: Honorable Fred Silverman

FROM: Nikerray Middlebrook

Date: April, 19, 2000

RE: ORDER Reappointing Public Defenders
Office

Dear Honorable FRED S. Silverman:

I am writing concerning the order reappointing the Public Defenders office. I had a meeting with James Bayard, Jr. on January 14, 2000 concerning the matter of being assigned to represent me on my legal matter. I recieved a letter from Mr. Bayard after the meeting, but as of this date I have heard nothing from Mr. Bayard. Is he ^{Mr. Bayard} my Attorney?

As I have stated before I was unable to file an appeal on

account of ms. Ayres (Attorney for Appeal) was negligent and/or failed to file timely direct appeal. I have never recieved the transcript. I am left with no way to challenge my conviction and sentence.

I pray to you that if I am represented by the Public Defenders office, please forward a copy of your order reappointing the Public

Defenders office and have the attorney meet with me promptly.

I truly believe ^{the correction or} [at my trial] An "Error" [nobody] made but hopefully it does not exist all the time during the course of a jury trial.

Very Truly
yours

TO: Judge Silverman

FROM: Nikeray Middlebrook

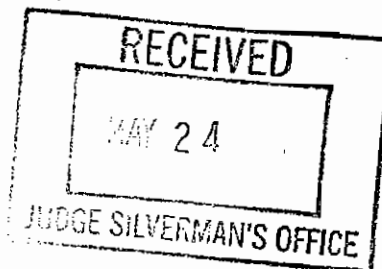
Date: April 25, 2000

Dear Honorable Fred Silverman:

Once again I am writing
to inquire into the order ~~for~~ ^{reappointing}
the Public Defenders office. I have ^{wrote to the Attorney who} not responded ^{visited}
to my letters or visited with me to discuss ^{with}
the goals of my representation. Please shed ^{me}
some light on the situation, send me the ^{Ad of}
order concerning the matter and inform me ^{today}
as to whether and/or who is my attorney ^{re}
for the purpose of obtaining ^{Mr. Bayne} an appeal, ^{was}

TO : Honorable Fred S. Silverman

FROM: Nikerray Middlebrook
SBI # 295569
Gander Hill Prison



Date :

MAY 21, 2000

RE : Attorney, James Bayard, Jr.
9608015635

Dear Honorable Fred S. Silverman :

On January 11, 2000, The Public Defender (James Bayard, Jr.) was reappointed to represent defendant (Nikerray Middlebrook). Unfortunately I have not heard from Mr. Bayard concerning my appeal. I have wrote numerous letters to Mr. Bayard.

I would appreciate your inquiring into the matter. I am deeply troubled by Mr. Bayard's non action in my case on account I previously had problems with his procrastination and filed a Motion To Dismiss Counsel on October 14, 1997. Please appoint me another attorney.

Very Truly Yours
Nikerray M. 75
Nikerray Middlebrook

THE STATE OF DELAWARE,
PETITIONER

ID NO. 9608015635

VS.

NIKERRAY MIDDLEBROOK,
DEFENDENT

NOTICE OF MOTION

TO :

PLEASE TAKE NOTICE that the within Motion
To Dismiss will be presented to the Honorable Court
as soon as Counsel may be heard.

Dated :

Nikerray Middlebrook

IN AND FOR NEW CASTLE COUNTY

THE STATE OF DELAWARE,
Plaintiff.

VS.

Nikerray middlebrook,
Defendant.

ID. NO. 9608015635

MOTION TO DISMISS

COMES NOW, the Defendant, Nikerray middlebrook,
by and through his undersigned Counsel,
, and hereby request that this Honorable
Court, pursuant to Superior Court Criminal Rule 48(b),
Dismiss prosecution for unnecessary delay There has
been an unreasonable delay in violation of the first
Sentence. of Criminal Rule 32(a), which warrants the
Sanction of dismissal.

FACTS

1. On September 5, 1997 I (Nikerray middlebrook) was
scheduled to be Sentence on Conviction of

Attempted Murder, lesser included offense of Assault 1st
two counts of Possession of Firearm During Commission
of Felony and Possession of Firearm By Person Prohibited.

2. The Sentence Hearing was postponed by prosecutor,
for the reason of delaying imposition of sentence
until outcome of open charge.

3. The Sentence Hearing was continued numerous
times because of this delay : November 7, 1997 -
Sentencing continue to hire private Attorney.

February 27, 1998 -

Sentencing Continue.

March 27, 1998 -

Sentencing Continue. Defense Attorney Not Available.

ARGUMENT

The prosecution of Defendant Middlebrook
must be Dismissed since Delay IN Completing
Prosecution Amounts To An UNCONSTITUTIONAL
Deprivation of Rights. THE DELAY WAS Purposeful.

4. IN order to successfully attack the "without
unreasonable delay" provision of Criminal Rule 32(a)
and the Sixth Amendment of the U.S. Constitution,

Along with the fifth Amendment violation of DUE PROCESS, a Defendant must prove that the delay was purposeful, ^{AND OPPRESSIVE} Pollard V. UNITED STATES, 77 S.Ct. 481 (1957);

Commonwealth V. Stewart, Pa Super, 221 Pa. Super. 1.289

A.2d 126 (1972). The Court weighs the particular circumstances of the delay. A unreasonable delay in sentencing is a violation of Due Process, also a delay in Sentencing which is unreasonable violates Rule 32(a).

The delay must not be purposeful or oppressive, Pollard V. US., Supra.

Do Not
Need

5. However, no valid reason for delay existed; it was exclusively for the Convenience of the State.

Deliberate State delay in the hope of obtaining an advantage over the accused is not unknown, IN such circumstances the fair administration of Criminal justice is endanger;

The Speedy Trial Clause then serves the public interest by penalizing official lawlessness. See, e.g. U.S. V. Provo, 17 F.R.P. 183 (D.C.Md),

aff'd percuriam, 350 U.S. 857, 76 S.Ct. 101, 100 L.Ed. 761

(1955) (The government to prosecute, not persecute,

those whom it accuses of crime.

Do we
Need

6. The principles of procedural fairness required by the Due Process Clause of the fourteenth Amendment and fifth

Do Not
Need

not by assimilating into the Fourteenth Amendment the "Speedy Trial" provision of the Sixth Amendment. In

Klopfer Vs. NC, 386 U.S. 213, 87, S.Ct. 988, 18 L.Ed. 2d.1 (1967), The

Court held that the Sixth Amendment standards governing Speedy trial are made obligatory on the States by the Fourteenth Amendment Due Process Clause. My Sentence was unconstitutionally delayed under the test of due process. See, e.g. *Beasley V. Pitchess*, 388, F.2d. 706

(C.A. 2d. Gr. 1963). The delay must be deliberately caused by the Government, *U.S. V. EWEH*, 383 U.S. 116, 86, S.Ct 773 15 L.Ed. 2d. 627 (1966). If the States' delay is deliberate, intended to harm the accused, it strikes at the fairness of our Criminal process, it however constitutes abuse of the Criminal process and lessens the deterrent value of any conviction obtained. Thus for the Clause to be fully realized, it must apply to any delay in the Criminal process that occurs after the State decides to prosecute and has sufficient evidence for arrest or indictment.

7. The Court can assume that the interval between judgement and sentencing is governed by the

Sixth Amendment Clause, Welsh v. U.S., 348 F.2d. 885 (C.A. 6th Cir 1965).

The Sixth Amendment U.S.C.A. provides in pertinent part: "In all Criminal prosecutions the accused shall be entitled to a speedy and public trial."

The right to a speed trial is necessarily relative.

It is consistent with delays and depends upon circumstances. ^{The 6th AMEND.} It secures rights to the defendant, It does not preclude the rights of public justice,

Beaves v. Haubert, 198 U.S. At 87, 25 S.Ct. at 576. The essential ingredient ^{of} ^{The 6th AMEND} is "Orderly expedition and not mere speed." Smith v. U.S., 360 U.S. 1, 10, 79 S.Ct. 991, 997, 3 L.Ed.

2d 1041 (1969). In the judging ^{cannot} ^{need} reasonableness of a particular delay (1) The source of delay; (2) The Reasons for it; (3) and whether the delay prejudiced interest protected by the Speedy Trial Clause.

9. On September 5, 1997 the sentencing delay cannot be held as a waiver of my rights ^{Def.} because ^{on account} of Attorneys' failure to object when fundamental rights are at stake.

waiver is defined as an intentional relinquishment or abandonment of a know right or privilege". The Courts should indulge every reasonable presumption against "waiver" Aetna Ins. Co. v. Kennedy to use Bogash, 301 U.S. 389, 393, 57 S.Ct. 805, 813, 81, L.Ed. 1177 (1937) and they should not "presume agreement or consent in the loss of fundamentals rights". OHIO BELL TEL. CO. v. Public Utilities Comm, 301 U.S. 292, 307, 57, S.Ct. 724, 731, 81, L.Ed. 1093 (1937). The rights to a Speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. Klopfer, Supra, 386 U.S. at 223, 87 S.Ct. at 993. It is the duty of the prosecutor, not only to prosecute those charged with a crime but also to observe the constitutional mandate guaranteeing a Speedy trial. If the prosecutor fails to do so, the defendant cannot be held to have waived his constitutional right to a Speedy trial., U.S. v. Dillon 183 F. Supp. 541, 543, (1960) Thus if

the delay of
 always rest with one or another government
 authority. Marshall v. U.S. 199 U.S. App. D.C. 83,
 337 F.2d. 119 (1964).

10. In THIS CASE AT BAR

The Court has caused defendant prejudice
 in the delay, the state has delayed in clear
 bad faith. There is no way of proving the
 prejudice to defendant which occurs
 outside the courtroom ***

(2) The Severing of family and social ties; (3) And
 The Personal "anxiety." The Right to a Speedy Trial,
 57, Col. h. REV. 864. It seems inherent In prosecutorial
 delay is "potential substantial prejudice." U.S. v.

Wade 388 U.S. 218, 227, 87 S.Ct., 1926, 1932 18 L.Ed. 2d.
 1149 (1967), to the interest protected by the Speedy
 Trial Clause. It is likely that generalized standards
 would have to be developed to indicate when during
 the course of delay there arises a probability
 of "substantial prejudice." Once however delay exceeds
 that point, prejudice would cease to be an issue.
 The Defendant thus has made out a prima

facile case of denial of Speedy Trial it, showing that the prosecution was delayed beyond the point at which a probability of prejudice arose and that the alleging defendant was not responsible for the delay and by alleging the state might have reasonably have avoided the delay. Therefore the showing of prejudice is not required when a criminal defendant is asserting a constitutional right under the Sixth Amendment, U.S. v. Lustman, 258, F.2d 475, 477, 478 (C.A. 2d Cir. 1958).

The Def.

- II. Mr. Middlebrook has clearly shown a deliberate attempt by the state to use delay to harm the defendant or state delay that is purposeful is unjustifiable. Pollard v. U.S., Supra 352 U.S. at 361, 77 S. Ct. at 485. The same may be true of any state delay that is unnecessary, whether intentional or negligent in origin. It has been held that negligent delay violates the Speedy Trial Clause, Hanrahan v. U.S., 121 U.S. App. D.C. 134, 139, 348, F.2d 363, 358 (1965). This is a deliberate misuse of the Criminal process by public officials. The crucial question may be whether the delay might reasonably have been avoided — whether it was unnecessary, in the other hand, the essential importance of the reason for the delay, and on the otherhand the length of delay and its potential for prejudice

Almost any delay could be reasonably avoided.

Similarly, lengthy delay, even in the interest of realizing an important objective, would be suspect.

WHEREFORE, DEFENDANT, Nikeray Middlebrook respectfully request that this Honorable Court dismiss Prosecution in violation of Defendants Middlebrook rights to a Speedy trial and DUE Process of Law under State and Federal Constitution.

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,
Plaintiff,

IO No.

VS.

Nikerray Middlebrook,
DEFENDANT

ORDER

AND NOW, TO WIT, this day of June, 1998,
the foregoing Motion to Dismiss having been
duly heard and considered by the Court;

IT IS HEREBY ORDERED;

That Defendant Nikerray Middlebrook
Motion to Dismiss is granted

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)
vs.) IN96-09-1119 thru 1122
) and 1795
NIKERRAY K. MIDDLEBROOK,)
Defendant.) Sentencing -
June 12, 1998

BEFORE: HON. FRED S. SILVERMAN

APPEARANCES:

ROBERT H. SURLS
Deputy Attorney General
On behalf of the state.

CAROLYN AYERS
Attorney at Law
On behalf of the defendant.

TRANSCRIPT OF PROCEEDINGS OF
June 12, 1998

BETTY J. GLEASON
COURT REPORTER
P. O. Box 888
Clayton, Delaware 19809

1 today. I've shown a copy to opposing counsel and wish
2 to present it to the court at this time.

THE COURT: Thank you.

MS. AYRES: From what I gather, the
substance of the motion to dismiss is because of the
delay in his actual sentencing and what he believes is
maneuvering on the part of the state. However, I also
have to tell the court that the last continuance was a
result of my health condition. Keeping this in mind,
I don't know how -- if your honor wishes to read --
wishes to review what Mr. Middlebrook has written or
you wish me to continue making a statement.

THE COURT: Proceed. Thank you.

MS. AYRES: Mr. Middlebrook is a very
intelligent person. He graduated from high school.
He attended Delaware State University for a year and a
half. His goal was to become an accountant, and it
still is.

When he got in trouble the first time
around he had to withdraw from school, but then he
picked up and went back to school and went to Delaware
Technical Institute and there he again took up
accounting courses. He wanted to continue in that

June 12, 1998

Courtroom No. 202

1:28 o'clock p.m.

PRESENT:

As noted.

MR. WALLACE: Your honor, if I could turn
to item twelve, Mr. Nikerray Middlebrook.

Mr. Surlles and Miss Ayres.

MS. AYRES: Good afternoon, your honor.

While I was not the trial attorney in this
case, Mr. Middlebrook has asked me to say a few words
on his behalf to show that there are some positive
aspects to him.

He and I both realize he's facing very
substantial time because of the seriousness of the
charges, including the attempted murder charge.
However, we ask the court to note that Mr. Middlebrook
still maintains his innocence.

He, in fact, has also, for technical
reasons, has or I understand today did not file a
motion to dismiss, but he does wish the court to
consider a motion to dismiss. And ethically I feel
like I have to present a written motion that he signed

course until again he was caught in what he believes
to be the wrong place at the wrong time and what he
believes he's also being framed for the situation at
hand.

He -- while I was not at the trial, he has
asked me to ask the court to consider inconsistencies
that were made at trial by the witnesses. The one
witness saying at one point that he did not see Mr.
Middlebrook's entire face and at another point I think
saying that she did. We ask that the court look at
all these factors and look at the fact that he did
have an alibi witness who took the stand and said that
Mr. Middlebrook was not in the area at the time of the
crime.

While I know your honor has given your
blessing for the verdicts in this case, Mr.
Middlebrook feels that this has to be restated because
he feels that he was not fairly represented by his
attorney below. And he wishes to assert that his
Sixth Amendment right was violated in the trial
process as well as the scheduling of the sentencing at
hand.

And he wishes to make this again, not in

Page 5

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1 any disrespect to the court, but for matters of record
2 and the appeal purposes.

3 What is Mr. Middlebrook doing now?

4 He is considered a model prisoner. He's
5 what they call a tier man at Gander Hill. He is a
6 significant help with the food service program. Any
7 course that's available, he takes it. He, in fact,
8 has taken most of the correspondence, paralegal type
9 courses at the prison. He's completing them right
10 now.

11 Also, your honor, I have numerous letters
12 that I've also showed opposing counsel that I wish to
13 present to the court at this time.

14 THE COURT: Thank you.

15 MS. AYRES: These letters are from people
16 that have known Mr. Middlebrook before, after and
17 during the time of the alleged troubles that have
18 brought him here today. You'll see statements from
19 people like Mr. Sullivan, Miss Daniels, that say that,
20 you know, they were unaware that he had any type of
21 temper problem. That, as far as they're concerned,
22 that he was always a good mannered person, respectful
23 to his elders and just overall a hard worker,

1 And also from the letters that people that
2 have known him for longer than this court has known
3 him stating what positive things there are about Mr.
4 Middlebrook.

5 And keeping that in mind, your honor, I
6 know the court is very busy at this point and I don't
7 -- know there's limitations on the amount of
8 witnesses, but I do have two in addition to Mr.
9 Middlebrook and I don't know how the court wishes to
10 proceed.

11 THE COURT: The court has a standard
12 approach to sentencings. We will hear from the next
13 of kin to a victim or the victim in certain
14 sentencings. We have a standard practice that we do
15 not hear from other people during sentencing hearings
16 besides counsel, and I'm going to stand by that
17 standard practice.

18 MS. AYRES: I understand, your honor, and
19 for the record I do take exception to it because we do
20 have people here to attest to the positive nature of
21 Mr. Middlebrook. With this in mind --

22 THE COURT: Let me interrupt you for a
23 moment so that we can make the record complete.

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1 intelligent person.

2 While -- if the court will indulge me
3 further, we do have two people here besides Mr.
4 Middlebrook that wish to speak, his grandmother, Mabel
5 Lee, who was a big help in raising him, as well as
6 another person, I believe, who's here, Mr. Stockman,
7 who wishes to speak as well. And they will tell you
8 and reiterate what are in the letters that your honor
9 is reviewing right now.

10 As far as his record -- and this is not the
11 first time he's been in trouble. He has had an
12 assault charge before. He has had a charge of
13 receiving stolen goods, those types of charges.
14 However, he was trying to turn his life around, your
15 honor, by going to school, being an accountant.

16 And he asks the court to still have mercy
17 on him.

18 While I understand that your honor can
19 sentence him up to life imprisonment for the attempted
20 murder charge, that there are positive things and that
21 he does have goals in life. He has shown attempts to
22 reach those goals by entering the programs at the
23 prison, having previously gone to college.

1 Has anyone on behalf of the court done
2 anything to preclude those people from making their
3 feelings known through written submissions to the
4 court?

5 MS. AYRES: None, other than I guess my
6 representation that I would try to get them to speak
7 today and that may be why -- one of reasons why it's
8 not in writing.

9 THE COURT: Very well. If they would like
10 to submit something after sentencing, and there is a
11 basis in the things they submit to reconsider
12 sentencing, then I certainly will do that. But
13 meanwhile, the court will not depart from its standard
14 practice of not hearing live witnesses at sentencing
15 hearings.

16 MS. AYRES: Thank you, your honor.

17 At this point then if the court would like
18 to hear from Mr. Middlebrook --

19 THE COURT: That's fine. Thank you.

20 MR. MIDDLEBROOK: Your honor, I stand here
21 before you today to address the court and speak with
22 no disrespect.

23 I'm an innocent man, and I did not commit

1 the crime.
 2 For almost two years I've lived my life in
 3 mortal agony. And no one could understand the anguish
 4 of disparity that I've been caused by the system we
 5 rely on which is fallible.
 6 I was given a public defender, Mr. James
 7 Bayard, whose incompetency and his representation of
 8 me was invariably egregious. My total trial was a
 9 farce. I do not see how the court could consider this
 10 a fair trial.
 11 I'm entitled to a trial with my interests
 12 vigorously and consistency advocated by an able
 13 lawyer. I'm not a lawyer. And because Mr. Bayard
 14 owed me a duty, I did not have a fair chance to --
 15 against my adversary.
 16 I've been taken away from my family. This
 17 has caused them so much pain and suffering.
 18 My grandmother's a woman who helped raise
 19 me, along with my mother. The whole situation has
 20 taken years off of her life.
 21 Because of the prosecution's unwillingness
 22 to seek other truths and find justice in this case
 23 I've lost friends. I've been taken away from my other

1 Most people that come in contact with me
 2 can never speak a bad word about me. I'm very
 3 considerate, caring, loving. I never been very
 4 disrespectful at all.
 5 My life is -- my life has been destroyed by
 6 two victims, a drug dealer and a perfidious informant,
 7 who would do anything to keep from coming to jail.
 8 It seems that this system is aimed at
 9 seeking to vindicate divine justice and allowing evil
 10 to exist. And Mr. Surles is well aware of both
 11 victims, but still pursued the matter.
 12 Mr. Bayard agreed to continue my sentence
 13 on September 5th, 1996, along with Mr. Surles, which
 14 led to a nine month delay. And I know that it seems
 15 by the guidelines I'm supposed to get mandatory time,
 16 your honor, and I know that you already had perceived
 17 knowledge about which sentence might have been given,
 18 but I -- I'm walking with God on this one, and he's
 19 working my legal case and I -- God has given me the
 20 strength to endure the bondage that will be placed on
 21 me today. And I know he'll continue to bring me
 22 through the servitude that will be given to me today
 23 and I will not lose. And I think that this will not

1 family members. I have experienced deaths when
 2 incarcerated in prison. Something you probably
 3 couldn't understand, that feeling to be behind walls
 4 and the suffering that the death of a loved one that
 5 you love very dearly.
 6 I'm sure you realize there is a social
 7 disadvantage of lengthy incarceration. The time can
 8 have a very detrimental impact on the individual.
 9 I've lost my job. I have disrupted my family life
 10 while I sit in jail in idleness. Most jails offer
 11 little or no recreation or rehabilitation programs.
 12 The time I spend in jail is simply dead time.
 13 Through it all I tried to keep myself from
 14 falling behind in society. I've taken correspondence
 15 courses that I've been struggling to afford. I never
 16 spent my life there sitting around doing nothing, your
 17 honor.
 18 As my lawyer has just told you, I attended
 19 Delaware State University. I was also a student at
 20 Del. Tech. University.
 21 I'm not the monster or the beast the
 22 prosecutor, Mr. Surles, has tried to make me out to
 23 be.

1 last very long.
 2 And thank you, your honor.
 3 THE COURT: Thank you.
 4 Will the state be heard?
 5 MR. SURLES: Yes, your honor.
 6 You were the presiding judge at the trial.
 7 You know the facts. The jury found him guilty of
 8 shooting two men in the back that fled from him. The
 9 facts were pretty clear, and I'd say the jury came up
 10 with the right decision. You saw to it that it was a
 11 fair trial and that he had adequate representation for
 12 whatever defenses he could come up with.
 13 As to his priors, the assault third in '93
 14 was a foreshadowing of things to come. '95 while a
 15 student at Delaware State, a stabbing, which gets him
 16 assault first.
 17 He stands here today facing twenty-one
 18 years minimum, but there's nothing about him that asks
 19 for a minimum sentence.
 20 He has a pending attempted murder for
 21 standing over a man and shooting him in the chest.
 22 He's had no prejudice whatsoever in the delay of
 23 sentencing, but -- he has to get at least twenty-one

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1 years, but there's nothing that calls for only
2 twenty-one years about that man.
3 The state doesn't ask for a number, but
4 notes that if he had no priors, never stabbed anyone
5 before, if he didn't have a pending assault second,
6 and pending attempted murder, twenty-one years would
7 be a sentence. Based on that the state thinks it has
8 to be more than twenty-one years.

9 THE COURT: Let me stop you for a moment so
10 that I'm clear on this.

11 Had defendant been sentenced earlier, the
12 one benefit that he might have received, if you want
13 to call it a benefit, is that his appeal could have
14 been filed sooner. The delay, if you will, in
15 sentencing has not meant that the defendant has served
16 one extra day in prison.

17 Is that correct, Mr. Surles?

18 MR. SURLES: Correct.

19 THE COURT: And, in fact, even if the court
20 had dismissed these charges at any time between the
21 verdict and today, my understanding is that he would
22 have been held in custody in connection with another
23 charge that is pending. Is that correct?

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1 MR. SURLES: That is correct.

2 MR. MIDDLEBROOK: Your honor, may I speak
3 on the other charges?

4 This case is twenty-one months old and it's
5 been set for trial numerous times, your honor.

6 THE COURT: Well, I appreciate what you're
7 saying. I think you did not understand, or at least
8 you are not appreciating the point that's being made
9 about that.

10 Those charges could be entirely bogus, the
11 state could be conspiring in the most unlawful way to
12 pursue those charges against you or any other bad
13 thing you want to say about those other changes, but
14 the court -- court's point is that those charges are
15 pending and you're being held on those charges. So
16 even if this case fell apart and even if those charges
17 are bogus, you would still be held in prison. And so
18 you've not served any time waiting for sentencing in
19 this case because of the delay that has been between
20 the time of the jury's verdict and the sentencing.
21 And that's the factual issue that I was trying to get
22 at.

23 Of course, I'm not accepting or making any

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1 finding with respect to the other charges. I'm just
2 simply saying that as long as they're out there,
3 they're an impediment to your being released. And I'm
4 not going to get into why those cases have not gone to
5 trial so far.

6 Anyway, I think the best thing to do with
7 respect to the motion that's filed contesting the
8 delay between the trial and sentencing is to dispose
9 of it now so that it does not stand in the way of the
10 appeal.

11 As much as I'm not partial to dealing with
12 motion practice at sentencings, I think this motion is
13 sufficiently lacking in merit that I can do it without
14 being unfair.

15 I've already indicated facts that militate
16 against the motion, but the idea that the court is
17 going to dismiss charges -- an attempted murder first
18 degree charge and assault first degree charge,
19 firearms charge, and/or related offenses because the
20 verdict came back in July and sentencing is now the
21 following June is incorrect. There is no prejudice.
22 There's no evidence other than conclusions, which are
23 not evidence, that the state has maneuvered

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1 improperly.

2 One of the delays, at least in this case,
3 was occasioned by a request by defense counsel for
4 delay. I think other delays were occasioned in part
5 because of getting defense counsel beyond trial
6 counsel to handle sentencing. So I think that the
7 delay is not entirely attributable to anyone, at least
8 in part, beside the defendant.

9 And finally, the court observes, but only
10 in passing, that defendant's represented by counsel.
11 So this motion was out of order in the first place,
12 but I have addressed it substantively anyway in order
13 to get beyond that.

14 Now, as to sentencing, on IN ninety-six
15 dash oh nine dash one one one nine, it's the sentence
16 of the court that effective September 11, 1996,
17 defendant is to pay the costs of prosecution, be
18 imprisoned for twenty-five years at level five. First
19 fifteen years are minimum under the statute.

20 As to IN ninety-six dash oh nine dash one
21 one two zero, it is the sentence of the court,
22 consecutive to the prior sentence, you be imprisoned
23 for two years at level five.

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1 As to IN ninety-six dash oh nine dash one
2 one two one, it's the sentence of the court,
3 consecutive to the prior sentence, you be imprisoned
4 for five years at level five.

5 IN ninety-six dash oh nine dash one one two
6 two, it's the sentence of the court, consecutive to
7 the prior sentence, you be imprisoned for five years
8 at level five.

9 IN ninety-six dash oh nine dash one seven
10 nine five, it's the sentence of the court that you,
11 consecutive to the prior sentence, be imprisoned for
12 one year at level five suspended for one year at level
13 two probation.

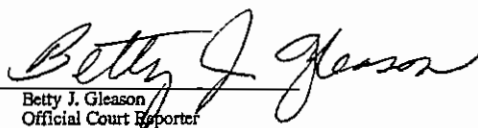
14 * * * * *

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1 CERTIFICATE OF REPORTER

2
3
4 I, Betty J. Gleason, Official Court
5 Reporter of the Superior Court, State of Delaware, do
6 hereby certify that the foregoing is an accurate
7 transcript of the proceedings had, as reported by me,
8 in the Superior Court of the State of Delaware, in and
9 for New Castle County, in the case herein stated, as
10 the same remains of record in the office of the
11 Prothonotary at Wilmington, Delaware.

12 WITNESS my hand at Smyrna, Delaware, this
13 18th day of September, A.D., 2000.

14
15
16
17
18 
19 Betty J. Gleason
20 Official Court Reporter
21
22
23

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR _____

COUNTY

STATE OF DELAWARE)

v)

NIKERRAY MIDDLEBROOK)

Name of Movant on Indictment)

No. _____

(to be supplied by Prothonotary)

NIKERRAY MIDDLEBROOK)

Correct Full Name of Movant)

MOTION FOR POSTCONVICTION RELIEF

INSTRUCTIONS

- (1) This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury.
- (2) All grounds for relief and supporting facts must be included, and all questions must be answered briefly in the proper space on the form.
- (3) Additional pages are not permitted. If more room is needed, use the reverse side of the sheet.
- (4) No citation of authorities is required. If legal arguments are submitted, this should be done in a separate memorandum.
- (5) Only convictions that were included in the same plea agreement or were tried together may be challenged in a single motion.
- (6) When the motion is completed, the original must be mailed to the Prothonotary in the county in which the judgment of conviction was entered. No fee is required.
- (7) The motion will be accepted if it conforms to these instructions. Otherwise, it will be returned with a notation as to the deficiency.

MOTION

1. County in which you were convicted NEW CASTLE
2. Judge who imposed sentence HONORABLE FRED S. SILVERMAN
3. Date sentence was imposed JUNE 12, 1998
4. Offense(s) for which you were sentenced and length of sentence (s):
ATTEMPTED MURDER 1st - 25 YEARS, ASSAULT 1st - 2 YEARS, POSSESSION OF A
OF A - 5 YEARS, POSSESSION OF A FIREARM DURING COMMISSION
OF A FELONY - 5 YEARS AND POSSESSION OF A MARIJUANA PARAPHRASIS - 2 YEARS

Do you have any sentence(s) to serve other than the sentence(s) imposed because of the judgment(s) under attack in this motion?

Yes (☒) No (☐)

If your answer is "yes," give the following information

Name and location of court(s) which imposed the other sentence(s)

SUPERIOR COURT, NEW CASTLE COUNTY

Date sentence(s) imposed: MAY 26, 2000

Length of sentence(s) 38 YEARS

6. What was the basis for the judgment(s) of conviction? (Check one)

Plea of guilty (☐)

Plea of guilty without admission of guilt ("Robinson plea") (☐)

Plea of nolo contendere (☐)

Verdict of jury (☒)

Finding of judge (nonjury trial) (☐)

7. Judge who accepted plea or presided at trial HONORABLE FRE S. SILVERMAN

8. Did you take the witness stand and testify? (Check one)

No trial (☐) Yes (☐) No (☒)

9. Did you appeal from the judgment of conviction? Yes (☐) No (☒)

If your answer is "yes," give the following information:

Case number of appeal _____

Date of court's final order or opinion _____

10. Other than a direct appeal from the judgment(s) of conviction, have you filed any other motion(s) or petition(s) seeking relief from the judgment(s) in state or federal court? Yes (☒) No (☐)
How many? (☐)

If your answer is "yes," give the following information as to each:

Nature of proceeding(s) NEW TRIAL MOTION AND MOTION TO DISMISS COUNSEL

Grounds raised INEFFECTIVE ASSISTANCE OF COUNSEL AND
NEWLY DISCOVERED EVIDENCE

Was there an evidentiary hearing? NO

Case number of proceeding(s) N/A

Date(s) of court's final order(s) or opinion(s) NOVEMBER 17, 1999

Did you appeal the result(s)? NO

11. Give the name of each attorney who represented you at the following stages of the proceeding relating to the judgment(s) under attack in this motion:

At plea of guilty or trial JAMES BAYARD Jr., ESQUIRE

On appeal CAROLINE P. AYRES, ESQUIRE

In any postconviction proceeding NONE

12. State every ground on which you claim that your rights were violated. If you fail to set forth all grounds in this motion, you may be barred from raising additional grounds at a later date. You must state facts in support of the ground(s) which you claim. For your information, the following is a list of frequently raised grounds for relief (you may also raise grounds that are not listed here): double jeopardy; illegal detention, arrest, or search and seizure, coerced confession or guilty plea; uninformed waiver of the right to counsel, to remain silent, or to speedy trial; denial of the right to confront witnesses, to subpoena witnesses, to testify, or to effective assistance of counsel; suppression of favorable evidence; unfulfilled plea agreement.

Ground one: DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL

Supporting facts (state the facts briefly without citing cases):

(1) DEFENSE COUNSEL, (CAROLINE P. AYRES, ESQUIRE) WAS INEFFECTIVE FOR FAILING TO FILE TIMELY DIRECT APPEAL ON DEFENDANT'S BEHALF.

Ground two: DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL

Supporting facts (state the facts briefly without citing cases):

(1) DEFENSE COUNSEL, (JAMES BAYARD JR., ESQUIRE) WAS INEFFECTIVE FOR FAILING TO PERFECT APPEAL - POST CONVICTION RELIEF.

Ground three: DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL

Supporting facts (state the facts briefly without citing cases):

(1) TRIAL COUNSEL, (JAMES BAYARD JR., ESQUIRE) WAS INEFFECTIVE FOR FAILING TO REQUEST A DNA TEST DURING AND/OR BEFORE TRIAL ON EVIDENCE.

DEFENDANT ASK COURT TO ORDER DNA TEST.

Supporting Facts (state the facts briefly without citing cases):

(1) DEFENDANT REQUEST TO MOVE THE COURT FOR FUNDS TO HAVE SCIENTIFIC ANALYSIS (DNA TEST) DONE ON EVIDENCE IN THE OF INTEREST OF JUSTICE.

Wherefore, movant asks that the court grant him all relief to which he may be entitled in this proceeding.

Signature of attorney (if any)

I declare the truth of the above under penalty of perjury.

Date signed

Nikony K. Middlebrook

Signature of Movant
(Notarization not required)

A-40

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

NIKERRAY MIDDLEBROOK,

Defendant.

)
)
)
)
)
)
)

ID #: 9608015635

ORDER

At this point, it is obvious that considerable confusion surrounds Defendant's original sentencing and the events immediately following it. In short, Defendant, in effect, had two attorneys, one court-appointed and one privately retained. It is unclear as to which attorney was responsible for filing Defendant's appeal.

In order to clear up the confusion and to protect Defendant's rights, the sentence originally imposed on June 12, 1998 is reimposed, in its entirety, as of today. The public defender is reappointed to represent Defendant for all purposes, including the timely filing of an appeal from Defendant's conviction and the reimposed sentence.

IT IS SO ORDERED.

August 21, 2000

Date



Judge

cc: Prothonotary
pc: James Bayard, Esquire
Caroline P. Ayres, Esquire
Loren Meyers, Deputy Attorney General
Robert Surles, Deputy Attorney General
Nikerray Middlebrook

MARCH 8, 1998

Dear Mrs. Ayres,

I am writing you once again to ask about your thoughts on what I HAVE read in this case, "State v. Cunningham, Del. Super., 405 A.2d 706." The court dismissed prosecution under Criminal Rule 48(b) because of unnecessary delay. Mrs. Ayres the "without unnecessary delay provision of Criminal Rule 32(a) means, when the Court convicts a person of a crime the determination by the Court to punish that convicted person, must occur to establish with avoidance of needless delay. (The significant factor of my delay is that there was no valid reason for the Court to delay Sentencing on September 5, 1997 until I was taken to trial on an unrelated offense.) Also Criminal Rule 32(a) states, "When there is a factor important to the sentencing determination that is not capable of being resolved, postpone the imposition of sentence for a reasonable time until the factor is capable of being resolved." Now the factor to be resolved is wheather the Court in postponing the Sentencing until I was taken to trial on an unrelated offense violated my Due Process Rights. In scope of the above the Court has denied me the right to a fast and speedy trial as well as my right to a timely Appeal. The most important fact is that the period of time for which something is delayed must in no manner be resolutely aiming at a specific goal, purposeful.

THE LAW OFFICES OF
CAROLINE PATRICIA AYRES

ATTORNEY & COUNSELOR AT LAW

Jnauary 22,1999

CAROLINE PATRICIA AYRES
Admitted to Delaware, Maryland,
District of Columbia, Virginia, and
United States Supreme Court Bars
Only

OF COUNSEL
JOHN R. HINER JR.
Admitted in Delaware and California
Only

OF COUNSEL
MONTEE WYNN
Admitted to Pennsylvania, New Jersey,
and District of Columbia Bars Only

OF COUNSEL
ALERO SMITH-KIDD
Admitted to Nigerian Bar and
Solicitor in England Only

TELEPHONE (302) 655-1300
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TOLL FREE 1-800-67 AYRES

WILMINGTON OFFICE:
503 WEST NINTH STREET
POST OFFICE BOX 85
WILMINGTON, DELAWARE 19899

DOVER OFFICE:
375 WEST NINTH STREET
DOVER, DELAWARE 19901
TELEPHONE (302) 735-5590
FAX (302) 735-5592

VIRGINIA OFFICE:
650 TRENTS MILL ROAD
POST OFFICE BOX 907
DILLWYN, VIRGINIA 23936

Nikkery Middlebrook
Gander Hill Prison
Wilmington, Delaware 19801

Re: State v. Middlebrook

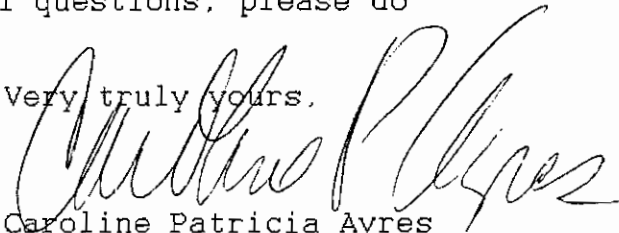
Dear Mr. Middlebrook:

This is to inform you that your renewed Motion for a New Trial has been denied. For whatever reason, I never received a copy of this decision in the mail, and had to ask the Court for a copy. Consequently, the thirty day time for a normal appeal time has run. Therefore, in order to pursue all of your appeal rights, despite the late receipt of this decision, we must do so through a postconviction motion. (See attached case law) I have placed an order for your transcript, so that we can now pursue all of the issues we deem appropriate.

I have made Judge Siverman's Office aware that I did not receive a copy of his Order until recently, and was told that I should state these facts in a cover letter, with a copy of the Postconviction Motion.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,



Caroline Patricia Ayres

CPA/midd117.doc

cc: middni.01

Enclosure: Court Order

To: Mr. Bayard

From: Nikeray Middlebrook

Date: March 29, 2000

RE: State v. Nikeray Middlebrook

Dear Mr. Bayard:

I am concerned on account I have not spoke with you for sometime. I am sure you recieved the letter forwarded to you from the Office of Disciplinary Counsel.

I would like you to send my entire file and I want you to explain the general strategy and your outlook of success in the case. I want to have sufficient information, so I can take a intelligent part in the decisions concerning the goal of my representation and the method of accomplishing what I want.

I believe you have a duty to act in my best interest and my total demand as to the position of handling my case.

I would appreciate a prompt response in order that we might proceed without delay.

Very Truly Yours

Nikeray Middlebrook

P.S. I Also look forward to you mailing the judges order reappointing the public Defenders office. And I have a positive Outlook You will meet with me to discuss my motion for transcripts.

Exhibit D

TO: Mr. Bayard
FROM: Nikeray Middlebrook
RE: Rule 61 motion

Date: 5/24/00

Dear Mr. Bayard :

I am deeply troubled by the fact no Rule 61 motion has been filed, you were reappointed by Honorable Fred S. Silverman on January 11, 2000 to handle the situation. Also I expressed to you at our meeting on January 14, 2000 I want us to review all documents before being filed to the court. I desire for a filing deadline in the matter [Filing of Rule 61 motion].

I would like to share some information I have come across lately, I read an article in the News Journal, [Senate Approves DNA evidence bill S.S. 1 for S.B. 329 (Winslow)]. The article caught my attention on the fact convicted criminals who believe DNA Evidence could exonerate them would have 3 years from time the final judgement is entered to ask Court to order DNA Test. I feel we need to discuss this matter between ourselves and consider making the request to the Court.

Also I have found cases which involved the matter where counsel failed to docket an appeal, sentence was vacated and the individual was resentenced. [Bobby Price v. State and Browner v. State, Del Supr., No. 350, 1983 Herrmann, C.S. (Oct. 23, 1987) (Order)] I seriously think you should review each case

Exhibit 3

Page 2

I expect a meeting with you
at Gander Hill soon and a filing of the
Rule 61 motion concerning the issues. What
is the issue concerning the transcript.

Very Truly Yours,

Nikunj Mehta

A-466

~~scribble~~

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NIKERRAY MIDDLEBROOK,
Defendant - Below
Appellant,

VS

NO.

STATE OF DELAWARE,
Plaintiff - Below
Appellee.

NOTICE OF APPEAL

TO: Clerk of Court
55 THE GREENS
P.O. Box 476
Dover, DE 19903

Deputy Attorney General
Department of Justice
820 North French Street
Wilmington, DE 19801

PLEASE TAKE NOTICE that Defendant - Below, Appellant, Nikerray Middlebrook, Pro SE does hereby appeal to the Supreme Court of the State of Delaware from the ORDER of the Honorable Fred S. Silverman of the Superior Court of the State of Delaware in and for New Castle County entered on August 21, 2000 in the Case of State of Delaware vs. Nikerray Middlebrook, Criminal Action Numbers IN 96 - - - through , and ID Number 9608015635. A copy of the ORDER of the Court is attached to this Notice of Appeal.

The name and address of the attorney below for Appellee is: Loren Meyers, And Robert Surles
Deputy Attorney General
Department of Justice
820 North French Street
Wilmington, Delaware 19801

PLEASE TAKE FURTHER NOTICE that Appellant hereby designates the portion of the record and transcript in accordance with Rules 7(c)(4) and 9(e)(ii) in the following manner:

Appellant's Sentencing of June 12, 1998 and Appellant's Sentencing hearing which was continued on November , 1997.

Dated:

Nikky Muller

Nikhenray Middlebrook

SBI 295 569

1301 E. 12th Street

Wilmington, DE 19809

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NIKERRAY MIDDLEBROOK,
 Defendant - Below,
 Appellant,

VS.

NO

STATE OF DELAWARE,
 Plaintiff - Below
 Appellee.

PETITION UNDER RULE 26(e)

COMES NOW, Defendant - Below, Appellant, Nikerray Middlebrook, Pro Se, and respectfully requests that pursuant to Supreme Court Rule 26(e), this Honorable court waive the docketing deposit required by Supreme Court Rule 20(a) for Appellant Middlebrook, based upon the following grounds:

1. Appellant Nikerray Middlebrook is currently incarcerated at the Multi-Purpose Criminal Justice Facility as a result of his criminal convictions in the Superior Court of the State of Delaware in and for New Castle County in the case of State of Delaware vs. Nikerray Middlebrook, ID Number 9608015635
2. At the present time, Appellant Middlebrook is an indigent person without employment or savings or other to pay his legal fees.
3. Appellant Middlebrook has no assets with which to pay the docket fee necessary in order to file and prosecute an appeal in this

Honorable Court

4. As a consequence of his indigency, Appellant Middlebrook is unable to pay the docketing deposit required by Supreme Court Rule 20(a) which is necessary for the filing of an appeal of the

ORDER in the Superior Court of the State of Delaware in and for New Castle County to the Supreme Court of the State of Delaware.

WHEREFORE, Appellant Nikeray Middlebrook respectfully request that this Honorable Court, pursuant to Supreme Court Rule 26(e), waive the requirement that Appellant pay the docketing deposit required by Supreme Court Rule 20(a) in order that Appellant may file an appeal to the Delaware Supreme Court from the ORDER of the Honorable Fred Silverman.

Nikeray Middlebrook
1301 E. 12th Street
Wilmington DE 19801

Dated :

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NIKERRAY MIDDLEBROOK,
Defendant-Below,
Appellant,

vs.

No.

STATE OF DELAWARE,
Plaintiff-Below
Appellee.

DIRECTIONS TO COURT REPORTER OF
PROCEEDINGS Below TO BE TRANSCRIBED
PURSUANT TO RULE 9(c)

TO:

Chief Court Reporter
Superior Court Reporters
Daniel L. Herrmann Building
1000 North King Street
Wilmington, Delaware 19801

COMES NOW, Appellant Nikerray Middlebrook and hereby directs the proceedings in State of Delaware vs. Nikerray Middlebrook ID Number 9608615635, in the Superior Court of the state of Delaware in and for New Castle County, to be transcribed as set forth below:

Appellant's Sentencing on June 12, 1998 and Sentencing which was continued November, 1997.

Dated:

A-51

Nikerray Middlebrook
P.O. Box 956
Wilmington DE 19809

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NIKERRAY K. MIDDLEBROOK,)	
)	
Defendant Below,)	
Appellant,)	
)	No. 424, 2000
v.)	
)	
STATE OF DELAWARE,)	
)	
Plaintiff Below,)	
Appellee.)	

NOTICE OF APPEAL

TO: ROBERT H. SURLES
Deputy Attorney General
Department of Justice
State Office Building
820 North French Street
Wilmington, DE 19801

PLEASE TAKE NOTICE that Nikerray K. Middlebrook, defendant-below, appellant, does hereby appeal to the Supreme Court of the State of Delaware, from the convictions and sentence imposed on August 21, 2000, in the Superior Court of the State of Delaware by the Honorable Fred S. Silverman, in Criminal Action Nos. IN96-09-1119, 1120, 1121, 1122, 1795 in that Court. The name and address of the attorney below for Appellee is: Robert H. Surles, Deputy Attorney General, Department of Justice, State Office Building, 820 North French Street, Wilmington, Delaware. The party against whom the


appeal is taken is the State of Delaware.

PLEASE TAKE FURTHER NOTICE that appellate hereby designates the portions of the record and transcript in accordance with Rule 7(c)(6) and 9(e)(ii) in the following manner:

Designation set forth on attached Exhibit A.

The original sentence of June 12, 1998 will follow under separate cover.

Dated: September 5, 2000


JAMES A. BAYARD, JR.
Assistant Public Defender
State Office Building
820 North French Street
Wilmington, DE 19801

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NIKERRAY K. MIDDLEBROOK,)	
)	
Defendant Below,)	
Appellant,)	
)	No. 424, 2000
v.)	
)	
STATE OF DELAWARE,)	
)	
Plaintiff Below,)	
Appellee.)	

DIRECTIONS TO COURT REPORTER TO PROCEEDINGS
BELOW TO BE TRANSCRIBED PURSUANT TO RULE 9 (e)

TO: MAUREEN MCCAFFERY
BETTY GLEASON
Court Reporter
Superior Court
Daniel L. Herrmann Courthouse
1020 N. King Street
Wilmington, DE 19801


Appellant does hereby direct the proceedings in Nikerray
K. Middlebrook v. State of Delaware, Criminal Action Nos.
IN96-09-1119, 1120, 1121, 1122, 1795 in the Superior Court of
the State of Delaware, In and For New Castle County, to be
transcribed to include the following:

1. Opening statements of the State and the defendant;
2. All trial testimony including sidebars and office
conferences during the trial;
3. Closing arguments of the State and the defendant;

4. The Court's instructions to the jury and any exceptions thereto; and

5. The sentencing of June 12, 1998.

I hereby certify that transcription of the above-listed portions of the proceedings below is essential to the prosecution of this appeal.

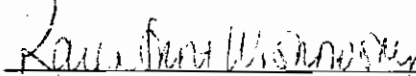

JAMES A. BAYARD, JR.
Assistant Public Defender
Carvel State Office Building
820 N. French Street
Wilmington, Delaware 19801

AFFIDAVIT OF MAILING

BE IT REMEMBERED that on this 5th day of September, 2000, personally appeared before me, a Notary Public for the State and County aforesaid, Karen Short Wishowsky, a secretary for the Public Defender's Office, who being by me duly sworn did depose and say as follows:


1. That she caused to be delivered by Public Defender runner, two copies of Appellant's Notice of Appeal, and two copies of Directions to Court Reporter to Proceedings Below to be Transcribed Pursuant to Rule 9(e) in the above-captioned matter to Robert H. Surles, Deputy Attorney General, Department of Justice, State Office Building, 820 North French Street, Wilmington, Delaware 19801; and;

2. That she caused to be delivered by Public Defender runner, two copies of Directions to Court Reporter to Proceedings Below to be Transcribed Pursuant to Rule 9(e) in the above-captioned matter to Maureen McCaffery and Betty Gleason, Court Reporters, Superior Court, Daniel L. Herrmann Courthouse, 1020 N. King Street, Wilmington, Delaware 19801.



Karen Short Wishowsky

SWORN TO AND SUBSCRIBED by me the day and year aforesaid.



NOTARY PUBLIC/ATTORNEY AT LAW

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE of DELAWARE,
Plaintiff.

vs.

Nikarray Middlebrook,
Defendant.

•

•

• CA. NO. 9608015635

•

•

•

•

•

Notice of Motion

TO: Honorable Judge Fred S. Silverman

Please Take Notice that the undersigned counsel will present the attached Motion for Enter AN ORDER directing the preparation of transcript to this Honorable Court at the earliest convenience of the Court and counsel.

Dated:

A-37

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,
PLAINTIFFS.

Vs.

Nikerray Middlebrook,
Defendant

•

•

•

•

• CA. NO. 9608015635

•

•

•

MOTION FOR ENTER AN ORDER DIRECTING THE
PREPARATION OF TRANSCRIPT

Comes Now, the Defendant, Pro SE, and moves this Honorable Court pursuant to Supreme Court Court Rule 9(c), to grant Motion for Enter an Order Directing the Preparation of Transcript, As grounds, Defendant states the following:

FACTS

1. Defendant, Nikerray Middlebrook, is in the process of filing a Post-Conviction motion in the present case.

2. However, in order to complete preparation for the above-mentioned motion, Defendant needs transcript
3. Before Privately Retained Counsel was hired, the Public Defenders Office represented the defendant in the present case.
4. The jury returned a verdict of guilt on July 18, 1997, Defendant was sentenced on June 27, 1998.
5. Defendants, Privately Retained Counsel failed to file timely direct appeal on Defendants behalf.
6. Consequently, Defendant, request this Court to Enter an Order Directing Preparation of the transcript of Entire Trial, Also designate the party responsible for payment of the cost of such transcript.

ARGUMENT

The Delaware Constitution specifically grants a Defendant, convicted of a felony and sentenced to imprisonment exceeding one month a right to appeal. Delaware Constitution art. IV Section 11.

1. As an indigent, the Defendant, is entitled, at Public expense, to all or such portions of the transcript of trial as may be necessary to file appeal. *Griffins v. Williams* 381 US 12, 76 S.Ct. 585.

2. The right, for Defendant, to have all or such portions of the transcript of trial, at Public expense, is not lost by an indigent Defendant who has parents financially able to pay the expense of appeal. *STATE V. ALLEN*, Circuit Court, 241 Ind. 427, 174 N.E.2d 411 (1961).
3. At trial, Defendant, was represented by Public Defender, and Privately Retained Counsel was hired to file the appeal, the State will be compelled in conformity with the positive rules of law by means of the Public Defender's budget appropriation or other appropriate route. *Pennock v. STATE*, Del. Supr., 361 A.2d 627.
4. Defendant's, loss of appeal occurred on account of the violation of Defendants right to effective representation, An adequate alternate remedy must be and is found by Superior Court Rule 61 *Braxton v. State*, 479 A.2d 831 (Del. Supr. 1984)
5. Defendant's, conviction may not stand and must be regarded as having been obtained in violation of the Constitution and laws, unless Defendant is afforded a chance to appeal or an adequate alternate remedy.

Wherefore, Defendant, respectfully request that this Motion For Enter An Order Directing the Preparation of Transcript, be granted

Dated:

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,
Plaintiff,

Vs.

Nikerray Middlebrook,
Defendant.

•
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•
•
•

CA. NO. 968015635

ORDER

AND NOW, TO WIT, this -- day of November 1999,
the foregoing motion for Enter An Order Directing the Preparations
of transcripts having been heard and considered by
the Court;

IT IS HEREBY ORDERED; that Defendant,
Nikerray Middlebrook, motion for Enter An Order directing the
preparation of the transcript is granted.

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,
PLAINTIFF,

VS.

NIKERRAY MIDDLEBROOK,
DEFENDANT

CA. NO. 9608015635

Motion To Enter An Order Directing The
Preperation of Transcript

Comes Now, the Defendant, Pro Se, and moves this
Honorable Court pursuant to Superior Court Criminal Rule 6(d)(3)
to grant motion for Enter an order directing the perperation of
transcript, as grounds, Defendant states the following:

FACTS

1. Defendant, Nikerray Middlebrook is in the process of filing
a Post - Conviction motion in the present case.

2. However, in order to complete preperation for above -
mentioned motion, Defendant needs transcript for following:

Ground (1) Jury Selection

A) Jury panel racially unbalanced. A fair representation
of the Community not present.

B) Alternate juror excused, Juror states "I know
victim in the case and I think He is a alright guy." Judge
abused discretion by not questioning entire panel as to

whether alternate juror related comments to any other jurors on panel.

Ground (2) Evidence

A) Attorney requested evidenced be excluded (Book Bag).

B) Attorney objects to introduction of clip found on Defendant, September 11, 1996 being introduced to jury.

Ground (3) Opening Arguments

A) States Case in chief - Motive.

Ground (4) Entire Trial from July 15, 1997 through July 18, 1997

A) Inconsistencies in witnesses statements.

B) Attorney objects to judge denying impeachment questions. Denial of cross examination.

C) Perjured Testimony by witnesses.

D) Verdict against Weight of Evidence (Judge

Abuse of discretion on motion of Acquittal).

Ground (5) Closing Arguments

A) Prosecutor Misconduct.

B) Defense Counsel Statements prejudice.

Ground (6) Sentencing

A) Unnecessary delay.

B) Dismissal of Counsel (motion Ruling).

Ground (7) Ineffective Assistance of Counsel

A) Failure to object to evidence.

B) Failure to object to In-Court Identification.

C) File Suppression Hearing - Identification.

D) Discovery (Rule 16) Request.

E) Request Lobby Instruction or request

continuance or mistrial for scientific Evidence Test.

F) Object to witness testimony

- G. Call witness - Nurse,
H. Cross examine witness for
1.) Witness Bias.
2.) Criminal record. (Request Jenks material)
3) Perjured and inconsistent testimony.
I. Transcribe Preliminary Hearing.
J. Call character witnesses.
K. Defense Counsel statement prejudice
(sidebar) and closing arguments.
L. Requesting lesser included offense of
Assault 1st
3. Consequently, Defendant, request this court to Enter an
order directing preparation of the transcript of Entire
trial.
4. The Delaware Constitution specifically grants a
Defendant, convicted of a felony and sentenced to
imprisonment exceeding one month a right to appeal.
Delaware Constitution art. IV Section 11.
5. Defendants, loss of direct appeal occurred on
account of the violation of Defendants right to effective
representation. An adequate alternate remedy must
be and is found by Superior Court Rule 6) Braxton
v. State, 479 A.2d 831 (Del. Supr. 1984).
6. Since loss of direct appeal for Attorney's failure to
file Notice of appeal, Defendant must address all of the
issues that could have been raised on appeal in Rule 6b.
7. Defendants conviction may not stand and must
be regarded as having been obtained in violation of the
Constitution and laws, unless Defendant is

afforded a chance to appeal or an adequate alternate remedy.

8. As an indigent, the Defendant, is entitled, at Public expense, to all or such portions of the transcript of trial as may be necessary to the appeal. Griffin v. Illinois 351 U.S. 12, 76 S.Ct. 585

9. At trial, Defendant, was represented by Public Defender, and Privately retained counsel was hired to file the appeal, the State will be compelled in conformity with the positive rules of law by means of the Public Defender's budget appropriation or other appropriate route Pendry v. State, Del. Supr., 367 A.2d 627.

Wherefore, Defendant, respectfully request that this Motion to Enter Order Directing the preparation of transcript, be granted

Date:

Nikerry Mullik

Nikerry Moore Brooks
1301 E. 12th Street
P.O. Box 9561
Wilmington, DE 19809

IN THE SUPREME COURT FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

NIKERRAY MIDDLEBROOK,
Petitioner

ID #

V.

THE HONORABLE FRED S.

SILVERMAN AND SUPERIOR

COURT OF THE STATE OF DE,

Respondents

PETITION FOR EXTRAORDINARY WRIT
OF MANDAMUS PURSUANT TO
SUPREME COURT RULE 43

I. JURISDICTION

1. The Supreme Court has original jurisdiction to entertain an Petition for Writ of Mandamus pursuant to Supreme Court Rule 43.

II. PARTIES

2. Petitioner, Nikerray Middlebrook, is currently incarcerated at the Multi-Purpose Criminal Justice Facility, 1301 East 12th Street, Wilmington, DE.

3. Respondent, The Honorable Fred S. Silverman, is a Associate Judge in the Superior Court of the State of Delaware.

Page 2

4. Respondent, The Superior Court of the State of Delaware in and for New Castle County, is the Court which has jurisdiction over felony criminal offenses and sentencing on felony convictions in the State of Delaware.

III. STATEMENT OF FACTS

Petitioner prays that a Writ of Mandamus be issued by this Court directed to Honorable Fred S. Silverman, The Superior Court of the State of Delaware in and for New Castle County to review Motion for Transcript(s). In Support of this petition, the following is shown :

1. The caption of the matter is STATE V. Nikeray Middlebrook, Criminal Action 9608015635 in the Superior Court of the State of Delaware, in and for New Castle County;
2. Petitioner filed motion for transcript(s) November 8, 1999. Petitioner's motion was denied November 18, 1999. Petitioner renewed motion December 8, 1999, the motion was referred to Honorable Fred S. Silverman.
3. Does the Petitioner have a constitutional right to a direct appeal and to the provision of a Free Transcript Under Supreme Court Rule 9(c)(i) in the interest of justice for purpose of filing an appeal to present

page 3

questions which may be raised on appeal, when attorney for petitioner was negligent and /or failed filing a timely direct appeal which denied appellant right for direct appeal. In the Interest of Justice. See Supreme Court Rule 8.

4. Petitioner was found guilty at trial on July 18, 1997 of a Class A Felony. Petitioner was sentenced on June 12, 1998. Attorney for Petitioner was negligent and /or failed to file timely direct appeal. Petitioner has filed complaint with Office of Disciplinary Counsel.

5. Petitioner filed motion for appointment of Counsel December 10, 1999. Petitioner's motion was referred to Honorable Susan DePescio. On January 11, 2000 the Public Defenders Office was reappointed to represent Petitioner.

6. Petitioner wrote letters to Honorable Fred S. Silverman requesting the court to pay for transcripts: December 3, 1999; Inquiring about motion for court to pay for transcripts and requesting court appointed attorney December 3, 1999; Requesting copies of transcript and order pertaining to motions filed, March 17, 2000.

7. Petitioner claims State is in direct violation

page 4

of Petitioner's constitutional right under Delaware Constitution Article I Section 7 and United States Constitution Amendment, fourteenth constitutional Amendment for denial of transcript and direct appeal.

8. Petitioner is currently left with no redress in filing direct appeal to challenge criminal conviction on account judgement became final when attorney for petitioner was negligent and/or failed to file timely direct appeal.

9. As indigent, Petitioner is entitled, at public expense, to all or such portions of the transcript of trial as may be necessary to Petitioner's appeal and right to have all or such portions of the transcript of trial, at public expense, is not lost by petitioner who is financially unable to pay the expense of appeal.

10. The Due Process Clause of the Constitution requires [appointment of counsel], free transcript for appellate purpose of an indigent Petitioner. It is necessary to receive at State expense the transcript.

11. Petitioner claims no other remedy is available to obtain trial transcript to file an appeal.

12. All petitioner's attorney's have failed to furnish trial transcripts to file direct appeal and/or post conviction motion or alternate relief.

Page 5

13. Petitioner's attorney's failure to file notice of appeal and/or failure to file petitioner's requested appeal constitutes ineffective assistance of counsel and is a direct violation of Petitioner's United States Constitution Amendment, Sixth Constitutional Amendment, right to counsel where appeal was never filed.

14. Petitioner's attorney's failure to file request significant portion of record for appeal rendered attorney's performance deficient

15. Petitioner's conviction may not stand and must be regarded as having been obtained in violation of the United States Constitution Amendment, Sixth and fourteenth Constitutional Amendments, Delaware Constitution and laws, unless petitioner is afforded a chance to an appeal or an adequate alternate remedy.

16. "An Two year Seven month delay in appeal from Petitioner's conviction violated due process.

17. Petitioner request to be released from incarceration at the Multi-Purpose Criminal Justice facility, 1301 East 12th Street, Wilmington, DE until the Superior Court of the State of Delaware in and for New Castle County furnishes trial transcripts and petitioner is afforded a chance to an appeal or an adequate alternate relief.

page 6

18. The reasons for granting the Writ are Honorable [Norman A. Barron] Fred S. Silverman improperly exercised jurisdiction denying order, Motion for Transcript(s) when petitioner has a constitutional right to file an appeal. Under United States Constitution and Delaware Constitution which specifically grants petitioner who is convicted of a felony and sentenced to imprisonment over a year a right to appeal. Petitioner has no device to challenge criminal conviction due to Courts failure to produce transcripts. Petitioner's attorney failure to file timely direct appeal and/or file petitioner's requested appeal constitutes ineffective assistance of counsel and prejudice is assumed and requires vacating judgement of conviction and sentence. Petitioner has no other available remedy and the legal right sought to be enforced is clearly established and the Court is in violation of Petitioner's liberty guaranteed by the Due Process Clause of the Constitution. See United States Constitution Sixth and Fourteenth Constitutional Amendment(s), Delaware Constitution Article I section 7.

Wherefore, Petitioner prays that this Court Issue a Writ of Mandamus affording Petitioner the following relief Vacating judgement of conviction and sentence and issue transcripts to afford Petitioner direct appeal.

Nikerray Middlebrook
Respectfully Submitted,
Nikerray Middlebrook

Date :

A-171

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

The State of Delaware

v.

Niherray Middlebrook

Cr. A. # 9516019663
9608015635

Notice of Motion

To:

Deputy Attorney General
Department of Justice
State Office Building
8th Floor
820 N. French St
Wilmington, DE 19801

PLEASE take notice that the attached MOTION TO DISMISS COUNSEL
AND FOR SUBSTITUTION OF Appointed Counsel will be presented to this
Honorable Court as soon it may be heard.

Dated: _____

Niherray Middlebrook

MPCJF
P.O. Box 9561
1301 E. 12th Street
Wilmington, DE 19809

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,
Plaintiff.

V.

Niherray Middlebrook,
Defendant.

CR. A. No's 9510019663
9608015635

MOTION TO DISMISS COUNSEL AND
FOR SUBSTITUTION OF APPOINTED COUNSEL

Now Comes The Defendant, Niherray Middlebrook, ProSe, and moves this Honorable Court to Substitute Court appointed Counsel pursuant to and under the Provision of Superior Court Criminal Rule 44(d) and The Defendant states the following:

(1) Defendant is currently represented by The Public Defenders office, Mr. James Bayard Jr., Esq in the following Criminal Cases CR. A. No's 9510019663 and 9608015635,

(2) Court appointed Counsel, Mr. James Bayard Jr., Esq. has negligently handled his duty to Defendant, Niherray Middlebrook to provide effective assistance of Counsel guaranteed by the Sixth Constitutional Amendment and Delaware Constitution Article 1 Section 7.

(3) Court appointed Counsel, Mr. James Bayard Jr., Esq. has shown a lapse of performance in his representation of defendant.

(4) Court appointed Counsel, Mr. James Bayard Jr., Esq. and defendant, Nikerray Middlebrook have an irreconcilable conflict, which might handicap defense.

(5) There is a complete breakdown of communication, which justifies discharge or substitution.

(6) Defendant, Nikerray Middlebrook has a legitimate reason for his loss of confidence; Court appointed Counsel's lack of investigation and preparation and other substantial reason(s).

(7) Defendant, Nikerray Middlebrook points to the issue of the ability and preparedness of Counsel, Mr. James Bayard Jr., Esq. to render effective assistance under the prevailing circumstances.

(8) Court appointed Counsel, Mr. James Bayard Jr., Esq. is not rendering reasonably effective assistance of Counsel and defendant, Nikerray Middlebrook request for a hearing to determine whether Defendant received effective assistance of Counsel.

Wherefore, Defendant respectfully request that his Motion To Dismiss Counsel And For Substitution of appointed Counsel be granted.

Date :

Niherray Middlebrook
Gander Hill Prison
Wilmington DE 19809
SBI #295569

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

Plaintiff,

V.

Niherray Middlebrook
Defendant.

CR. A. No.'s 9510019663
9608015635

ORDER

AND NOW, TO WIT, this _____ day of

_____, A.D., ; the foregoing

motion having been heard and considered, it is
hereby: ORDERED _____

Judge

IN THE SUPREME COURT OF THE STATE OF DELAWARE

427 , 2000

L. C. MEYERS

STATE OF DELAWARE,
Plaintiff below,
Appellant,
v.

CB

PRO SE
(DCC-00295569)NIKERRAY MIDDLEBROOK,
Defendant below,
Appellee.
(CONSOLIDATED WITH NO. 424, 2000)

DF \$ 00.00

2000

- 1 Aug 31 Notice of appeal from the order dated 8/21/00, in Superior Court, in and for New Castle County, by Judge Silverman, in Case ID No. 9608015635, with designation of no transcript. (served by hand 8/31/00)
- 2 Sep 05 Memo dated 9/5/00 from Justice Berger to Clerk, noting her disqualification in this matter. Counsel notified.
- 3 Sep 08 Order dated 9/8/00, Holland, J., appeal nos. 424, 2000 and 427, 2000 are CONSOLIDATED.
- 4 Sep 08 Letter dated 9/8/00 from Senior Court Clerk to Kathy Feldman, transcript is due to be filed by 10/16/00.
- 5 Sep 08 Motion to dismiss counsel and leave to proceed pro se by Nikerray Middlebrook. (service shown)
- 6 Sep 08 Affidavit requesting to proceed pro se pursuant to Rule 26(d)(iii) by Nikerray Middlebrook.
- 7 Sep 08 Letter dated 9/8/00 from Senior Court Clerk to James A. Bayard, Jr., Esquire, forwarding a copy of Mr. Middlebrook's affidavit for his information.
- 8 Sep 13 Order dated 9/13/00, Holland, J., appellant's pro se motion for a remand for an evidentiary hearing is GRANTED, and this matter is REMANDED with jurisdiction retained.
- 9 Sep 14 Certified copy of Order dated 9/13/00 to clerk of court below. Jurisdiction Retained. Case due to be returned by 11/13/00.
- 10 Sep 20 Prothonotary's receipt of certified copy on 9/19/00. (amw)
- 11 Sep 29 Letter dated 9/27/00 from Mr. Nikerray Middlebrook to Clerk, requesting a copy of the docket sheet. (copy sent) (eas)
- 12 Oct 11 Letter dated 10/9/00 from Mr. Nikerray Middlebrook to

Clerk, providing his temporary address change to:
DCC. (eas)

13 Oct 12 Court reporter's final transcript log entry:
Prothonotary received 10/6/00. (filed on 10/11/00)
(eas)

14 Nov 22 Letter dated 11-22-00 from Clerk to Judge Silverman,
requesting a status report to be filed by 12-4-00.
(clh)

15 Dec 05 Letter dated 12/4/00 from Judge Silverman to Justice
Holland enclosing "Findings of Fact, Conclusions of
Law and Recommendations" returning this matter from
remand (afb).

16 Dec 06 Order dated 12/6/00 by Holland, J., appellant's request
to proceed pro se is GRANTED; James A. Bayard, Jr.,
Esq. is permitted to withdraw as his attorney; a new
brief schedule shall issue (afb).

17 Dec 06 Letter dated 12/6/00 from assistant Clerk to Prothono-
tary, the record is due to be filed by 12/18/00 (afb).

18 Dec 06 Brief schedule issued. (opening brief due 1/5/01 (afb)

19 Dec 07 Record returned from remand. (filed on 12/6/00) (dlc)

20 Dec 15 Motion under Rule 15(b) by appellant.
• (served by mail 12/12/00) (clh)

21 Dec 15 Order dated 12-15-00 by Clerk, appellant's opening
brief and appendix are due 2-5-01. (clh)
2001

22 Jan 16 Motion under Rule 15(b) by appellant. (service shown)
(eas)

23 Jan 17 Order dated 1/17/01, Holland, J., appellant's opening
brief and appendix are due 3/7/01. The Court
anticipates no further extensions. (eas)

24 Jan 24 Motion under Rule 15(b) by appellant-Middlebrook.
(no service shown-copy sent) (filed 1/23/01) (clh)

25 Jan 30 Letter dated 1/30/01 from Assistant Clerk to appellant
stating that appellant's Motion under Rule 15(b) filed
1/23/01 appears to have crossed in the mail with the C
Court's 1/17/01 order granting an extension of time and
that the Court will take no further action with respect
to his motion filed 1/23/01 (afb).

26 Mar 01 Appellant's opening brief. (served by mail 2/22/01)
(eas)

27 Mar 07 Appellee's answering brief and appendix. (served by
mail 3/7/01) (amw)

28 Mar 07 Notice of voluntary dismissal by the State. (served

by mail 3/7/01) (amw)

- 29 Mar 26 Appellant's reply brief. (no service shown-copy sent)
(eas)
- 30 May 11 Order dated 5/11/01 by Holland, J., REMANDED
(ENV JTW RJH) (afb).
- 31 May 14 Record and certified copy of Order dated 5/11/01 to
Clerk of Court Below. Jurisdiction retained. Case due
to be returned by 6/11/01 (afb).
- 32 May 17 Letter dated 5/14/01 from appellee to Clerk,
requesting a docket sheet. (docket sheet sent) (eas)

SUPREME COURT OF DELAWARE

CATHY L. HOWARD
Clerk

AUDREY F. BACINO
Assistant Clerk

DEBORAH L. WEBB
Chief Deputy Clerk

LISA A. SEMANS
Senior Court Clerk

#4 SUPREME COURT BUILDING
55 THE GREEN
P.O. BOX 476
DOVER, DE 19903
(302) 739-4155

August 30, 2000

James A. Bayard, Jr., Esquire
Office of the Public Defender
Carvel State Office Building
820 North French Street, 3rd Floor
Wilmington, DE 19801

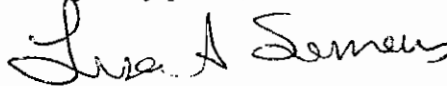
RE: *Nikerray Middlebrook v. State*, No. 424, 2000
(Cr.ID No. 9608015635)

Dear Counselor:

Today, Mr. Nikerray Middlebrook filed a *pro se* notice of appeal which appears to be from the Superior Court's sentencing order dated August 21, 2000, in Cr. ID No. 9608015635. A copy of Mr. Middlebrook's *pro se* appeal is attached for your review.

It appears from the Superior Court docket sheet that you represented Mr. Middlebrook in this matter. Therefore, the Court requests you to file a written statement on or before **September 11, 2000**, indicating that you recognize your continuing obligation under Supreme Court Rule 26(a) to represent Mr. Middlebrook in the above appeal. Please include with your statement a formal notice of appeal and directions to the court reporter, if appropriate.

Very truly yours,



Enclosure

/eas

cc: Mr. Nikerray Middlebrook
Loren C. Meyers, Esquire

A-81

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NIKERRAY MIDDLEBROOK,	§	Nos. 424/427, 2000
	§	
Defendant Below,	§	Court Below: Superior Court
Appellant,	§	in and for New Castle County
	§	in Cr.A. Nos. IN96-09-1119
	§	through -1122 and 1795 and
v.	§	Cr.ID No. 9608015635
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

ORDER

This 13th day of September 2000, it appears to the Court
that:

1. The appellant, Nikerray Middlebrook, seeks to appeal his Superior Court convictions of attempted murder first degree, assault first degree, two counts of possession of a firearm during a commission of a felony, and possession of a deadly weapon by a person prohibited. Prior to the time for the filing of the appellant's opening brief, the appellant has requested that his counsel be permitted to withdraw and that he be permitted to pursue his appeal *pro se*.

1) Whether the appellant has retained private counsel to represent him on appeal. If so, the Court's inquiry can end. If not, the Court must determine if the appellant is an indigent person.

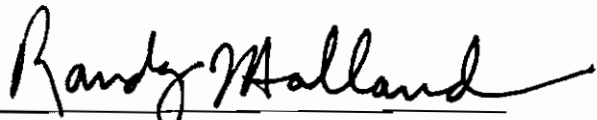
2) If the appellant is indigent, a determination must be made as to whether he understands his right to court-appointed counsel to assist him on appeal by an inquiry into the appellant's educational background and his familiarity, if any, with the criminal justice system, including the trial process. If the appellant is indigent, he should understand that he must either accept representation on appeal by his present court-appointed counsel or proceed *pro se*.

3) If the appellant elects to proceed *pro se*, an inquiry should be made into his decision to waive his right to retain private counsel or, if he is indigent, his decision to waive the assistance of his court-appointed trial counsel, including his explanation for such a decision. This should include the following inquiries:

a) Whether the appellant has consulted with any other person, including any other attorney, in the making of his decision to waive his right to counsel. The appellant may, but he is not required to, identify such persons.

B. This hearing should take place on notice to the State, and the trial judge should promptly thereafter make findings of fact and conclusions of law and transmit the same to this Court.

BY THE COURT:


Justice

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NIKERRAY MIDDLEBROOK,	§	Nos. 424/427, 2000
	§	(Consolidated)
	§	
Defendant Below,	§	Court Below: Superior Court
Appellant,	§	in and for New Castle County
	§	in Cr. A. Nos. IN96-09-1119
	§	through -1122 and -1795
STATE OF DELAWARE,	§	Cr. ID No. 9608015635
	§	
Plaintiff Below,	§	
Appellee.	§	

ORDER

This 6th day of December 2000, it appears to the Court that by Order dated September 13, 2000, the Court remanded this matter to the Superior Court for the limited purpose of conducting a hearing and making appropriate findings of fact and conclusions of law with respect to the appellant's request to proceed *pro se*. The Superior Court conducted an evidentiary hearing, in accordance with this Court's Order of remand, and thereafter filed the attached order on remand dated December 4, 2000, setting forth the Superior Court's findings of fact and conclusions of law.

NOW, THEREFORE, IT IS ORDERED that the trial judge's order dated December 4, 2000, is approved and adopted.

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

NIKERRAY MIDDLEBROOK,)	
)	
Appellant,)	
)	
v.)	Nos. 424/427, 2000
)	ID #: 9608015635
STATE OF DELAWARE,)	
)	
Appellee,)	

Submitted: November 27, 2000
Decided: December 4, 2000

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATIONS**

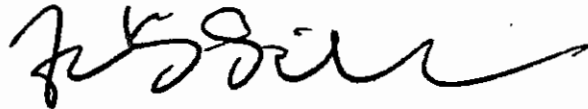
Upon Remand in Response to Appellant's
Request to Appear *Pro Se* on Appeal

In accordance with the Supreme Court of Delaware's September 13, 2000 Order,¹ this Court conducted a hearing, on the record, on November 30, 2000 for the limited purpose of making findings of fact and conclusions of law with respect to Appellant's request to pursue his appeal *pro se*. Pursuant to the remand, the Court made all of the inquiries and provided more information than is called for

¹ *Nikerray Middlebrook v. State*, Del. Supr., Nos. 424/427, 2000, Holland, J. (Sept. 13, 2000) (ORDER).

cautioned him against attempting to "fend off" the State's cross-appeal on his own. Nevertheless, Appellant continued to insist on representing himself.

In conclusion, the Court remains convinced that Appellant is making a mistake. Nevertheless, based on the *Watson v. State* colloquy and the Court's further inquiries, the Court concludes that under the prevailing legal standards, Appellant's decision to proceed *pro se* is knowing, voluntary and intelligent.



Judge

cc: Prothonotary (Criminal Division)
pc: The Honorable Randy J. Holland
Cathy L. Howard, Clerk of the Supreme Court of Delaware
Loren Meyers, Deputy Attorney General
James Bayard, Esquire
Nikerray Middlebrook, *Pro Se* Appellant